

Calendar No. 363

104TH CONGRESS }
2d Session }

SENATE

{ REPORT
104-251 }

**AIR TRAFFIC MANAGEMENT SYSTEM
PERFORMANCE IMPROVEMENT ACT OF 1996**

R E P O R T

OF THE

**COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION**

together with

ADDITIONAL VIEWS

ON

S. 1239



APRIL 10, 1996.—Ordered to be printed

Filed, under authority of the order of the Senate of March 29, 1996

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

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Mr. PRESSLER, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany S. 1239]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1239) the “Air Traffic Management System Performance Improvement Act of 1996”, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1239, as reported, is to reform the Federal Aviation Administration (FAA) and make it a more efficient and effective organization by significantly improving how the FAA operates in the following areas: governance, funding, rulemaking, procurement management, and personnel management. The Committee believes that reform in these areas will create incentives for the agency to make necessary improvements in the performance of the nation's air traffic control (ATC) system.

BACKGROUND AND NEEDS ASSESSMENT OF FEDERAL AVIATION ADMINISTRATION

FAA'S PROBLEMS

For 38 years, the FAA has consistently assured the traveling public that the nation's air transportation system is safe and reliable. At present, the FAA is involved in every aspect of ensuring the safety of the system. The agency provides licenses to those who work in the industry, certifies what can be used within the system,

determines the scope of airport development, and decides when and where aircraft can fly. In the past, the FAA has had significant resources to meet its primary objective of providing a safe and efficient air transportation system. As a general matter, the resources needed have been provided by the Congress, and, particularly during the 1980s, the FAA saw its budget increase significantly.

The future, however, may be considerably different, particularly given the trend of a decreasing federal role in maintaining and developing the nation's infrastructure. According to testimony before the Committee, the demand for air transportation services will increase dramatically over the next several years, while available resources will not be adequate to meet demand. Without substantial, comprehensive reform of the FAA, the United States is facing the undesirable prospect of continued reliance upon an outdated, inefficient ATC system. In the continental United States, as well as in unique states that are highly dependent on air service, such as Alaska and Hawaii, the adverse effects on safety and efficiency could be substantial.

Over the years, particularly following airline deregulation and the subsequent expansion of the air transportation system, the demand for a more efficient ATC system has increased. This demand undoubtedly will continue to increase in the future. Air carriers, which historically have covered most of the costs of this increased demand, can no longer assume the added costs of an inefficient system. Indeed, over the years, the commercial airline industry has reduced costs in every conceivable way. One carrier, for example, now spends only 12 cents per passenger on food. Today, the industry is a far different one than it was prior to deregulation because air carriers themselves have become much more efficient and operate in a more cost-effective way. Accordingly, the focus must now be on enacting legislation to make comprehensive changes in how the FAA conducts its business and to remedy inefficiencies within the organization and its ATC system.

For many years, the U.S. ATC system, which carries more than 50 percent of the world's air traffic, has remained the world's safest air transportation system. Moreover, despite maintaining an excellent safety record and low accident rate, the Administration and industry have continued to work to achieve a "zero accident" standard. However, maintaining the world's safest system and achieving even greater safety margins may not be possible in the future without meaningful reform of the entire FAA, including significant improvements in the areas of funding, governance, more efficient equipment procurement, and staffing.

The ATC system also has consistently been the most efficient in the world. The current ATC system consists of more than 30,000 pieces of equipment, including 402 towers, 167 radar approach controls (TRACONS), 21 air traffic control centers, and 61 flight service stations. Radars, computers, and navigation and landing aids are placed throughout the entire country to provide the best system possible. As the largest ATC system in the world, it handles two operations every second of every hour of every day. In effect, the FAA, which operates the ATC system 365 days per year, 24 hours per day, is running the production line for commercial airlines and all other segments of the aviation system. Such a complex ATC sys-

tem, however, tends to function much less efficiently than it should in the heavily bureaucratic environment of the existing FAA.

The general inefficiencies of our nation's ATC system have had an enormous, detrimental economic impact. Delays in the system are estimated to cost \$3.5 to \$5 billion per year, according to the Air Transport Association. One air carrier, when testifying before the Committee, indicated its annual delay costs exceed \$250 million. Another carrier told the Committee a single ATC power outage at Dallas-Fort Worth International Airport in 1995 was estimated to result in more than \$730,000 in direct costs. Although approximately two-thirds of ATC system delays may be weather-related, the Committee believes the ATC system itself is far from operating as efficiently as it should.

From January 1, 1995 through November 9, 1995, this complex system experienced 292 significant outages or failures of equipment and systems. The outages ranged from breakdowns of the Display Channel Complex (DCC) to power source problems. The Committee recognizes that none of the outages compromised safety, although there was one operational error attributable to an outage. The Committee also knows the FAA plans to replace the DCC at the five centers that rely on that system.

Despite this plan and the hard work of the air traffic controllers, technicians, and FAA management, the Committee firmly believes the outages and equipment failures must be addressed in the near term to improve the overall performance of the ATC system. This bill will put the FAA on the path of being better able to address all ATC system inefficiencies in a coordinated and comprehensive manner. At the same time, this bill acknowledges that our nation's ATC system always will require some government oversight because of its nature as a monopoly/public utility, and the FAA's need to ensure the highest level of safety for the traveling public.

The future of our nation's air transportation system is critical to helping our economy expand. Without a safe, efficient, and reliable system, many U.S. businesses and the U.S. travel and tourism industry will not be able to function or grow effectively. The Committee believes the need for reform of the air transportation system, which includes making significant changes within the FAA, requires more than simply modifying a particular program or programs. If reform does not provide the FAA with the ability to meet future demand, make the ATC system more efficient, and to modernize, then the safety and the efficiency of the entire U.S. air transportation network are at risk and dependent U.S. industries will be detrimentally affected. This bill seeks to enable the FAA to implement comprehensive reform to address all of these areas.

FUTURE DEMAND AND SUPPLY OF ATC SERVICES

The FAA faces two interrelated problems that highlight the urgent need to reform the FAA. First, there will be a much greater demand for ATC services over the next several years. Second, at the same time, when the system must be adequately funded and provided with sufficient resources to meet this demand, the federal government's contribution to the FAA will decrease. If the FAA continues to be funded as it is currently, funding for ATC services will not be adequate to meet future demand.

Every day, the FAA provides about 600,000 ATC services to commercial airlines, business jets, general aviation pilots, and the military. Approximately 519 million people flew on commercial airlines in 1994, according to the Department of Transportation (DOT). By 2002, the number of passengers is expected to grow by 300 million, a 35 percent increase. Over the same period, the number of ATC system user operations is expected to rise by 18 percent. This projected growth clearly requires that the ATC system must be modernized and capacity expanded. In turn, airport infrastructure deficiencies must be addressed to accommodate demand.

As demand for ATC system services increases steadily, the FAA will face ever increasing belt tightening, primarily because of efforts to balance the federal budget. In the past, and particularly during the 1980s, the FAA's budget grew significantly. According to FAA data included in General Accounting Office (GAO) testimony, the FAA's budget needs have generally been accommodated by Congress until very recently.

TABLE 1.—FAA APPROPRIATIONS AND TRUST FUND REVENUES, 1986–95
[In billions of dollars]

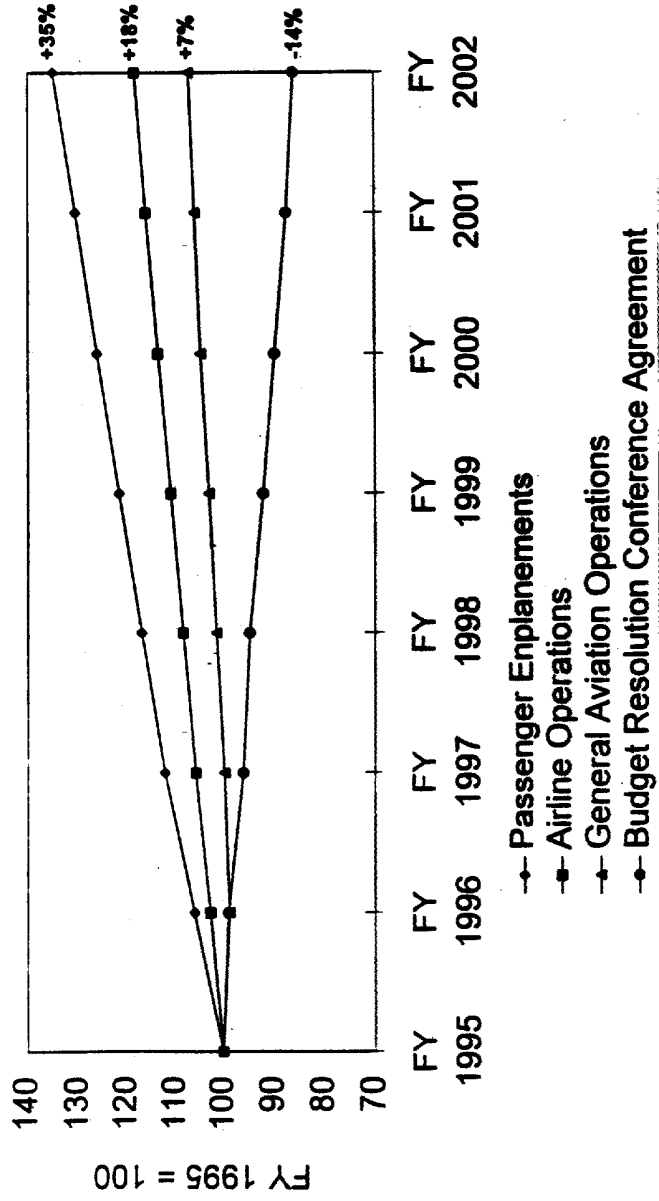
Fiscal year	FAA approp.	General fund approp.	Trust fund approp.	Trust fund revenues (receipts plus interest)	Trust fund ending uncommitted balance
1986	4.8	2.4	2.4	3.6	4.3
1987	5.0	2.4	2.6	3.9	5.6
1988	5.7	2.4	3.4	4.1	5.8
1989	6.4	3.0	3.4	4.7	6.9
1990	7.1	3.0	4.1	4.9	7.4
1991	8.1	2.0	6.1	6.2	7.7
1992	8.9	2.3	6.6	5.9	6.9
1993	8.9	2.3	6.6	6.1	4.3
1994	8.6	2.3	6.3	6.0	3.7
1995 (est.)	8.3	2.1	6.2	6.4	3.0

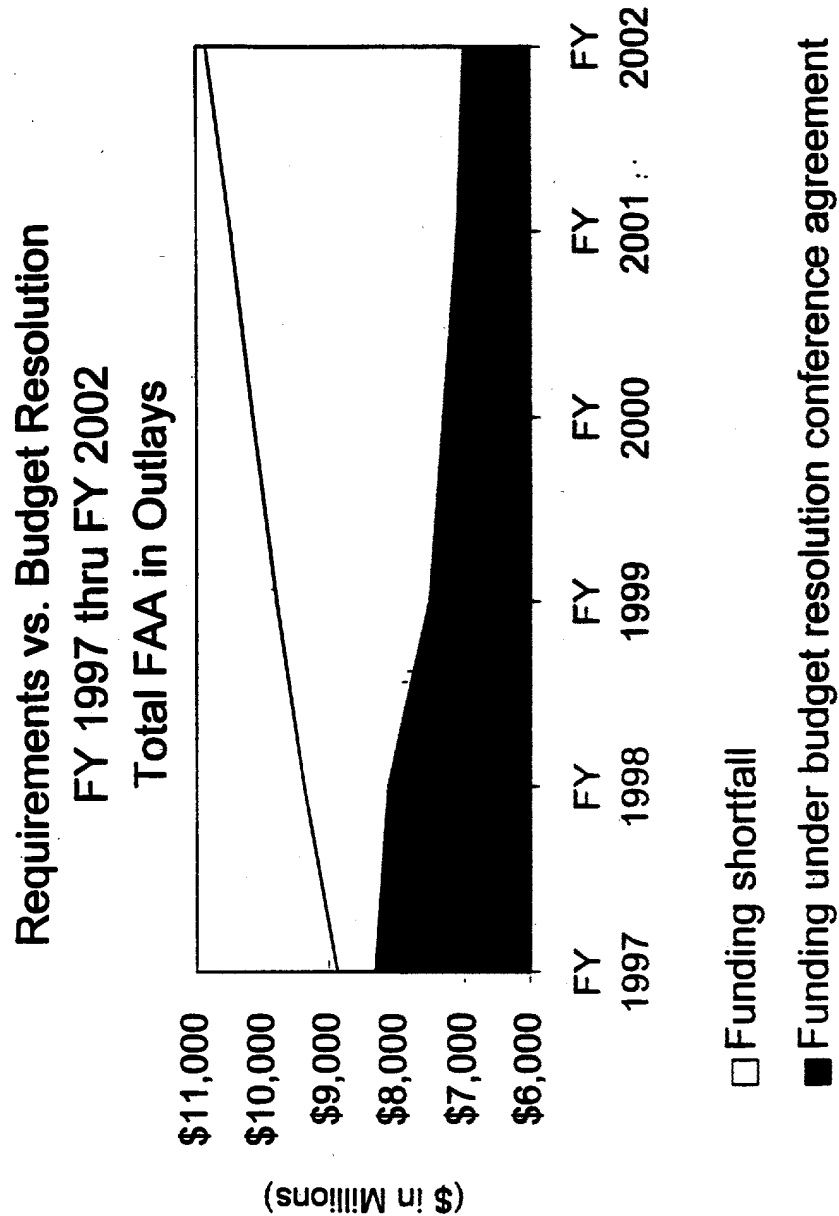
Note.—Totals may not add because of rounding.

Source: FAA; included in GAO testimony.

Over the last few years, however, the FAA's budget has been cut by a total of \$600 million. In addition, the FAA has reduced its workforce by 5,000, and eliminated many programs. As discussed in more detail below, FAA funding likely will further decrease over the next several years because of spending reductions in transportation programs proposed in the recent balanced budget resolution.

Federal Aviation Administration Spending and Workload Trends FY 1995 thru FY 2002





Without meaningful and coordinated reform, particularly in the area of FAA funding, the FAA's ability to meet growing demand and provide services to all segments of the aviation community will be compromised.

The Committee is well aware of the need for meaningful reform of the FAA. Over the last 10 years, the Committee and the aviation community have examined many options designed to make the FAA a more effective organization, without imposing unnecessary

and burdensome restrictions on its operations. Those efforts occurred at a time when FAA was not facing such a serious situation regarding its funding. Today, in large part because of the ramifications of the balanced budget resolution, FAA's situation requires urgent attention.

ATC SYSTEM MODERNIZATION

The Committee, the FAA, and the entire aviation community want to see the ATC system modernized quickly and efficiently. In fact, as noted above, over the last several years, the FAA has significantly reduced its workforce, worked directly with the system users to reduce delays, taken action to incorporate satellite technology as quickly as possible, restructured its acquisition process, restructured and reduced the cost of the Display System Replacement, and worked with the general aviation industry to create a more effective certification process. Despite these considerable efforts, however, the nation's ATC system is nowhere near to being as efficient as it should be. Moreover, it is not based, for the most part, on current technology, much less state-of-the-art technology.

Given the extent of the FAA's problems, particularly with regard to modernization of the ATC system, the Committee and the aviation community strongly believe that the agency must be fundamentally reformed, both to improve its administrative efficiency and to stimulate improved performance of the ATC system. During several hearings in 1995, the Committee heard testimony on many different proposals to reform the FAA. In addition to examining specific reform proposals, much of the discussion on reform focused on federal laws and regulations that inhibit timely implementation of technological improvements. The Committee believes the installation of new technology is a critical mission the FAA must fulfill. Unnecessary regulatory or legal hurdles must not stand in the way.

Frequent turnover in FAA upper management and a lack of budgetary stability have been cited as causes for the FAA's tendency toward reactionary operations. In addition, observers believe that in the past, there has been little or no long-term managerial accountability within the organization. The Committee believes, however, that simply liberating the FAA from current restrictions in the areas of personnel and procurement or making it an independent agency are not sufficient to solve all of its problems. Moreover, the Committee believes that changes to procurement laws, while essential, must be accomplished in the context of an overall change in the way the FAA conducts its business.

The FAA's procurement problems, such as modernization delays, are attributed in great part to the 10,500 pages of statutes and regulations under which the FAA and other government agencies acquire goods and services. These laws and regulations, despite well-intentioned drafting, have resulted in a procurement process that is too rigid, takes too long, and results in the inefficient use of time, people, and money. The Committee, however, recognizes acquisition delays are not solely caused by burdensome rules and regulations; the GAO and even the FAA have cited mismanagement as a factor that has led to modernization delays. Although Congress already has voted to allow the FAA to develop its own personnel and procurement systems as part of the FY 1996 DOT Ap-

appropriations bill (P.L. 104-50), broad-based reform of the FAA must accompany procurement and personnel reform. Moreover, since consideration of the FY 1996 DOT appropriations bill, the Committee has worked diligently with the DOT and FAA to develop a more comprehensive change to the personnel and procurement laws.

The substantial number of federal requirements governing personnel also place a significant burden on FAA's ability to effectively manage its workforce. FAA managers and employees must work with 47,200 pages of federal personnel laws and regulations. According to the DOT, the restrictions contained in these laws and regulations create an environment lacking flexible recruiting, flexible salary setting, and performance-based rewards. A more flexible and innovative personnel program or structure, such as that envisioned by this bill, could provide incentives for increased productivity, compensate employees based on performance, facilitate moving employees based on changes in the demand for ATC services, and improve overall management of the FAA's workforce.

CURRENT FAA FUNDING

At present, nearly all FAA funding is derived from the users of the nation's air transportation system. Aviation system users currently pay taxes into the Airport and Airway Trust Fund (a/k/a Aviation Trust Fund).¹ These taxes include a 10 percent passenger ticket tax, a 6.25 percent cargo waybill tax, a \$6 international departure tax, a 15 cents per gallon tax on gasoline for piston-engine aircraft, and a 17.5 cents per gallon tax on general aviation jet fuel. These taxes bring in approximately \$5-6 billion annually.² The Aviation Trust Fund currently has about \$14 billion in assets, comprised of U.S. Treasury certificates. Most of those assets are already committed for FAA expenditures, such as airport-related projects and ATC facilities and equipment. The remaining approximately \$5 billion are uncommitted funds (often referred to as a "surplus").

The FAA's \$8.3 billion budget for FY 1995 was comprised of approximately \$6.2 billion in tax revenues from the Aviation Trust Fund. The remaining \$2.1 billion was appropriated out of the General Fund. The General Fund contributes to the FAA's budget in part because of the various services the FAA provides to the Department of Defense (DoD), including national security services. In addition, the activities of the FAA and the ATC system provide benefits to the whole nation, and not only to airspace users. For example, the FAA's actions affect air cargo and mail transportation as well as the safety of those on the ground.

NEED FOR FAA FUNDING REFORM

Although the FAA's budget grew significantly in the 1980s, the years of growth in FAA funding appear unlikely to continue. As noted above, the FAA's budget has been cut by \$600 million over the last few years. The FAA also has substantially reduced the

¹Subsequent to the date on which this bill was ordered reported by the Committee, the Aviation Trust Fund excise taxes lapsed as of January 1, 1996.

²See Table #1 from FAA.

number of its employees and eliminated many technology programs. Moreover, funding for FAA is expected to continue to decline in the foreseeable future because of spending reductions in transportation programs proposed in the recent balanced budget resolution.

Testimony before the Committee clearly confirmed that, because of efforts to balance the Federal budget, future funding will fall far short of what the FAA will need to provide even the current level of services, and that drastic cuts in services will need to be made if new revenue is not found. The Administration, for example, projects an aggregate \$12 billion shortfall in FAA funding over the time period from fiscal year 1997 to fiscal year 2002. This projected funding shortfall represents the difference between FAA's stated need of \$59 billion during that period and an estimated budget cap of \$47 billion on FAA spending over those same six fiscal years. Aviation Trust Fund revenues, including interest, are expected to total about \$47 billion during that same period. Clearly, this implies that the General Fund contribution to FAA is likely to decrease significantly over that period.

The Committee agrees that a substantial FAA funding shortfall is looming. An independent study required by this bill will verify the accuracy of the FAA's projected needs over the next several years. Regardless of whether the specific number is higher or lower than the Administration now projects, a very substantial shortfall in the FAA's budget is anticipated if steps are not taken by Congress to provide a secure funding stream for the FAA.

The aviation community also recognizes the dire situation regarding FAA's funding needs. In July 1995, the National Aviation Associations Coalition (NAAC), which includes 30 organizations representing all segments of the aviation community, issued a consensus statement on FAA reform that stated, "funding reform . . . is the most critical element of FAA reform." The Committee concurs with this position, particularly in light of the anticipated budgetary constraints that will affect future spending on transportation programs. On October 31, 1995, the NAAC issued another consensus statement reiterating its belief "that achieving budget and funding reform, including means for dedicating aviation resources, is critical."

Many in the aviation community also believe the year-to-year appropriations process makes it difficult for the FAA to operate under a long-term capital investment plan. This leads to reactive, near-term investment decisions by the FAA based on an artificially imposed federal budget process, rather than on the basis of need or sound business practices.

If the projected shortfall in the FAA's budget is not remedied in the near term, there will be a detrimental impact on all segments of the aviation community. With respect to the impact on general aviation, the FAA has advised the Committee it would have to eliminate the general aviation safety program, which would make it more difficult for private pilots to get important information on aviation programs. The FAA's Office of Aviation Medicine would likely have to reduce funding for the annual processing of aviation medical certificates, which would create delays in processing medical certification for pilots' licenses. The number of FAA inspectors

and field facilities would decrease, which would create delays for those in the general aviation community who need certification and additional ratings processed. In addition, the FAA may need to close many if not all flight service stations and Level I and Level II towers, which provide important weather and safety information to general aviation pilots. In fact, over the last few months alone, the FAA has closed nearly 20 control towers. Without a predictable funding stream, the FAA will continue to cut services, which more often than not, would have a disproportionate impact on small and rural communities.

The funding provisions in this bill (particularly those in Title III) are critical because they provide a means for funding reform at the FAA, which should help alleviate the agency's projected funding problems and ensure aviation dollars will be dedicated for aviation purposes. The bill as reported is designed to ensure the funding reform called for is coupled with incentives necessary to ensure a far greater interest by the FAA and the aviation community in the efficiency of the ATC system, without jeopardizing safety. Indeed, as these reforms are implemented and the ATC system is able to handle efficiently the projected increase in demand for air traffic services, the system's safety should be protected. The Committee's vote on the bill supports the FAA funding reform, as contained in S. 1239, accompanied by long-needed improvements in the areas of governance, rulemaking, personnel management, and procurement management, will enable the FAA and the nation's ATC system to meet the needs of the aviation community and perform at the most efficient level.

DEVELOPMENT OF COMPREHENSIVE FAA REFORM LEGISLATION

Throughout 1995, many different groups reviewed several distinct proposals to make the FAA more efficient, while enhancing its safety function and the performance of the nation's ATC system. For example, certain FAA reform proposals have focused on either making the FAA an independent agency, creating a government-owned corporation to run the ATC system, or privatizing the agency.

On August 2, 1995, the Aviation Subcommittee held a hearing on the various FAA and ATC reform proposals. The Subcommittee heard testimony from many distinguished witnesses on these proposals and current problems facing FAA. Testimony by DOT Secretary Federico Peña, FAA Administrator David Hinson, Kenneth Mead (then Director of Transportation issues at GAO), and others emphasized their strong belief that any feasible reform bill must address the future funding requirements of the FAA. Other testimony concentrated on the merits of making the FAA an independent agency.

Until the August 2, 1995 hearing, the DOT and FAA remained adamant in their support for the Administration's proposal to create a government corporation to handle the nation's ATC services. Although the ATC corporation proposal lacked considerable Congressional support, it nonetheless contributed to a serious and comprehensive examination of how best to address the future needs of FAA and the aviation community. Moreover, during the August 2, 1995 hearing, Secretary Peña indicated that the DOT would be

willing to work with Congress to craft a mutually acceptable proposal for meaningful FAA reform. Over several weeks following that hearing, the Administration and members of the Aviation Subcommittee met frequently to develop a comprehensive FAA reform proposal.

LEGISLATIVE HISTORY

On September 13, 1995, Senators McCain, Ford and Hollings introduced S. 1239, the "Air Traffic Management System Performance Improvement Act of 1996." The bill was referred to the Committee on Commerce, Science, and Transportation.

Following the August 2, 1995 hearing on various FAA reform proposals, the Aviation Subcommittee held the first of two hearings on S. 1239 on September 27, 1995. Secretary Peña, Administrator Hinson and Deputy Administrator Linda Hall Daschle testified at that time regarding the Administration's support of the bill. Testimony also was heard from an aviation expert and representatives from the aviation community, including FAA labor, business aircraft, and manufacturers.

On October 12, 1995, the Subcommittee held its second hearing on the bill. Testimony was heard from representatives of the air carrier industry, including major air carriers, low-cost carriers, and a cargo carrier, and a representative of a flight attendants union.

On November 9, 1995, the Committee met in open executive session to consider an amendment in the nature of a substitute to S. 1239 offered by Senators McCain and Ford. Senator Stevens offered a substitute to the McCain-Ford substitute, but the Stevens substitute was defeated by a rollcall vote. Senators Gorton (aircraft manufacturing certification fees), Exon (agricultural aircraft), Dorgan (EAS program and rural air service study), Breaux (Brooks Architect-Engineer Act), and Bryan (business jets) each offered separate amendments to the McCain-Ford substitute, all of which were adopted by voice vote. By voice vote, S. 1239, as amended, was ordered to be reported, without objection.

SUMMARY OF MAJOR PROVISIONS

The bill as reported would provide for a comprehensive overhaul of the entire FAA by giving the FAA much more autonomy, while at the same time keeping it within the DOT. The FAA would have authority to develop new, innovative personnel and procurement systems, and be able to waive many federal laws and regulations in the areas of personnel and procurement that inhibit the effectiveness of FAA. The bill also would provide for direct aviation community input to FAA through a Management Advisory Council (MAC).

In cooperation with the MAC, the FAA would develop user fee systems for the services it provides, such as air traffic control, certification, and licensing. The bill would change the manner in which the FAA handles its rulemaking and regulatory functions. The FAA would retain an outside entity to prepare independent, objective studies of: (1) the FAA's budget needs and assumptions, and (2) the allocation of FAA costs among various segments of the aviation community, including public entity users such as the DoD.

The bill would provide the FAA with a three-year appropriations cycle and adjust the caps on the spending of Airport and Airway Trust Fund monies for FAA operations. In addition, the Essential Air Service (EAS) program would receive adequate funding and be transferred from the DOT to FAA. The DOT also would conduct a study on rural air service and air fares. Further, the bill conveys a sense of the Senate that Congress should spend the Trust Fund "surplus".

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office (CBO):

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, December 22, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1239, the Air Traffic Management System Performance Act of 1995.

Enacting S. 1239 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
(For June E. O'Neill, *Director*).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1239.
2. Bill title: Air Traffic Management System Performance Improvement Act of 1995.
3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 9, 1995.
4. Bill purpose: S. 1239 would make a number of changes in the regulatory, personnel, procurement, and financial practices of the Federal Aviation Administration (FAA). In particular, the bill would:

Establish deadlines for carrying out rulemaking proceedings and require the FAA to review regulations with annual compliance costs of greater than \$25 million;

Direct the FAA to develop and run new personnel and procurement systems that would be exempted from many federal regulations and requirements;

Create a Management Advisory Committee to provide advice and counsel to the FAA on management issues;

Establish a select panel to review and report on possible innovative funding mechanisms for the FAA, including loan

guarantees, financial partnerships with private entities, and government-sponsored enterprises;

Establish new fees for various FAA services, including training, licensing, regulatory proceedings, certification, assistance to foreign governments, and air traffic control for overflights;

Require the Department of Defense (DoD) to reimburse the FAA for the net cost of air traffic control services the FAA provides DoD;

Require the FAA to develop user fees for air traffic control services that would only be imposed on a segment of the aviation community if the current excise taxes for the Airport and Airway Trust Fund are terminated for that segment;

Make immediately available for expenditure all fees collected by the FAA, whether established by this act or not;

Appropriate \$50 million a year, starting in fiscal year 1997, for the essential air service program from fees collected by the FAA or other funds provided to the FAA (i.e., appropriated funds); and

Require the FAA to carry out various studies, including an analysis of the costs that each segment of the aviation community places on the FAA and the air traffic control system.

5. Estimated cost to the Federal Government: Enacting S. 1239 would affect both direct spending and spending subject to appropriations. The bill could transform the FAA from an agency financed largely by excise taxes and funded through the appropriations process to an agency that charges user fees and has the authority to spend the proceeds without appropriations action. The fees could total \$4.5 billion to \$6.5 billion a year. (\$50 million to \$250 million from the general fees, \$4 billion to \$6 billion from air traffic control fees, and \$0 to \$500 million from DoD). If the FAA were to maintain its current \$8 billion budget, \$1.5 billion to \$3.5 billion would have to be appropriated from the general fund or the remaining trust fund balances. (For fiscal year 1996, \$5.7 billion has been appropriated from the trust fund and \$2.5 billion from the general fund.) If S. 1239 is enacted and the trust fund taxes are terminated, the FAA's appropriation could be reduced by \$4.5 billion to \$6.5 billion, with new direct spending replacing the previously appropriated funds. However, this bill would allow the FAA to collect about \$100 million a year (no more than \$50 million from the general fees and a little more than \$50 million from the air traffic control fees) without various contingencies being met. In addition, the FAA would receive between \$0 and \$500 million from DoD, but this would be an intragovernmental transfer and would have no net budgetary impact.

Both the change in fee collections and the resulting expenditures would affect direct spending in each year, but the effects would be offsetting and there would be no net impact on aggregate direct spending over time. CBO has no basis for projecting the year-by-year effects on direct spending, because they would depend, to a large degree, on future legislative actions and on future FAA decisions as to what fees it would charge and how it would spend the proceeds. Initially the FAA would be able to collect less than \$100 million a year from non-DoD sources. The rest would be contingent on future Congressional actions. The following table shows the esti-

mated budgetary impact of the fees that would result directly from this bill.

[By fiscal years, in millions of dollars]

	1996	1997	1998	1999	2000
DIRECT SPENDING					
Estimated budget authority:					
Offsetting receipts		- 50	- 100	- 100	- 100
FAA spending		50	100	100	100
Total budgetary authority		0	0	0	0
Estimated outlays:					
Offsetting receipts		- 50	- 100	- 100	- 100
FAA spending		44	94	100	100
Total outlays		- 6	- 6	0	0

Some provisions of the bill would add to the FAA's administrative costs, while others would diminish them. As the new fees are collected and available for expenditure, the FAA would require a smaller appropriation in order to maintain its current budget of \$8.2 billion. But if S. 1239 is enacted, the FAA would face additional costs of about \$30 million in the first year or two and long-term annual costs of about \$10 million to carry out the administrative requirements of the bill. The FAA also may incur added costs by paying higher wages than permitted under the current personnel system, but could achieve some savings from procurement reforms. Because the potential impact of these provisions is very uncertain and some of the changes would occur under current law, CBO cannot estimate the overall impact of the bill on discretionary spending by the FAA. On balance, the bill is likely to lower such spending because a significant portion of the agency's current spending would probably be replaced by new direct spending.

Direct spending

S. 1239 would establish two sets of new user fees. Establishing and running a system to collect these fees would cost the FAA about \$25 million in the first year and \$5 million to \$10 million annually thereafter.

Budgetary Classification of Fees. These fees could be classified as either offsetting receipts (on the outlay side of the budget) or governmental receipts (shown on the revenue side of the budget). The classification could depend, at least in part, on how the FAA structures the new fees. Fees that are established as charges for business-type services and are based on the cost or value of the service being provided are generally classified as offsetting receipts or collections. Alternatively, fees that have little or no relation to the cost or value of the service being provided and reflect the federal government's sovereign power to tax are generally classified as governmental receipts.

Sections of S. 1239 indicate that the fees to be established are intended to be offsetting receipts; however, the bill also directs the FAA to consider factors other than the cost or value of the service being provided, such as how much parties are currently paying in aviation trust fund taxes and the impact the fees would have on

regional air carriers. Based on the bill's stated intent and the general nature of the proposed cost-related fees, CBO assumes for the purposes of this estimate that fees established under S. 1239 would be categorized as offsetting receipts. It is possible, however, that some of the fees would be categorized as governmental receipts.

General Fees. The first set of fees would be imposed for training, licensing, regulatory proceedings, certification, and overflight services (including services to foreign governments) provided by the FAA. It would be difficult for the FAA to collect any sizable amounts in fiscal year 1997. S. 1239 would prohibit the agency from collecting any fee created by this bill until six months after the FAA submits the required cost allocation and funding studies to the Congress. The bill would require the FAA to complete these studies six months after enactment. S. 1239 also would prohibit the FAA from collecting fees for certification services provided to aircraft manufacturers until it starts collecting the air traffic control fees (discussed below), some of which would commence thirteen and one-half months after enactment. In addition, starting in fiscal year 1998, the FAA would not be able to collect any of the fees for training, licensing, regulatory proceedings, and certification services provided to domestic members of the aviation community if outlays from the aviation trust fund for those purposes are less than the tax collections of the trust fund in the previous fiscal year.

CBO estimates that, starting in fiscal year 1998, the FAA could collect no more than \$50 million annually without regard to future appropriations action. However, if all the contingencies are met, the FAA would collect between \$50 million and \$250 million a year. At this time, the FAA has not determined for which specific services it would charge fees and how much it would charge. In any case, these fees would have no net impact on direct spending over time because the funds collected would be immediately available for expenditure.

Air Traffic Control Fees. Another set of fees would be imposed on aircraft operators for air traffic control services. These fees could not be imposed on any segment of the aviation community that currently pays aviation trust fund taxes until the taxes are terminated for that segment. Sport, recreational, and agricultural aircraft would be exempted from ever paying these fees. To the extent that air traffic control fees are imposed, they would have no net effect on direct spending over time because the funds would be immediately available for expenditure. However, as these funds are collected and available for expenditure, the FAA would require a smaller appropriation to maintain its current \$8.2 billion budget.

The amount of funds that these fees would generate is uncertain. The air traffic control system costs the federal government about \$6 billion annually. For the purpose of setting fees, the FAA may decide to also count as an air traffic control service \$1.5 billion a year in federal grants for airport improvement, because these funds maintain or increase the capacity of the air traffic control system. Thus, the FAA could collect no more than \$7.5 billion if the fees are based on the cost of the service being provided. However, the military would not pay these fees—it would only pay the reimbursement costs discussed below—and a sizable portion of the general aviation community—sport, recreational, and agricultural air-

craft—would be exempted. Therefore, we estimate that the most likely level of FAA collections would be between \$4 billion and \$6 billion a year. However, the FAA would only be able to collect a little more than \$50 million until the aviation trust fund taxes are terminated. These funds would come from civilian government aircraft operators (this segment does not currently pay aviation trust fund taxes) and air carriers who operate in U.S. territories (the bill directs them to pay the fees immediately).

Because the bulk of the air traffic control fees would be contingent on the termination of current aviation trust fund taxes, any future bill that terminates these taxes would be scored for the loss of the tax revenues, the receipts from the new air traffic control fees, and the resulting new direct spending. Because the air traffic control fees and the resulting spending would offset each other over time and because the aviation trust fund taxes generate about \$6 billion a year, such future legislation would be scored with increasing the deficit by about \$6 billion a year.

Department of Defense Reimbursement. The bill would require DoD to reimburse the FAA for the net air traffic control services that the FAA provides to DoD. Currently, the FAA provides the military with about \$1 billion a year of air traffic control services, but some of that amount would be offset by the value of air traffic control services DoD provides. Because there is some disagreement about the value of DoD's contributions to the air traffic control system, the size of the reimbursement is uncertain. Any reimbursement would come from appropriated DoD funds and would be immediately available for expenditure by the FAA. Hence, this provision would not necessarily change the amount spent for air traffic control, but could shift some of the financial burden from the FAA to DoD.

Essential Air Service. Starting in fiscal year 1997, S. 1239 would annually earmark \$50 million for the essential air service program from fees collected under this act or any other funds provided to the FAA (i.e., appropriated funds). Because these funds would have otherwise been spent for other purposes, this provision would have no impact on federal spending. Finally, the bill directs the FAA to spend on rural air safety any of the fees that are not obligated or expended at the end of a fiscal year for the essential air service program. It is unclear if "fees" refers to the \$50 million earmarked for essential air service or the remaining portion of all the fees collected. If the Department of Transportation takes the latter interpretation, all of the fee income generated by this act would be earmarked for essential air service and rural air safety.

Spending subject to appropriations

Personnel and Procurement Reform. The process of developing the new personnel and procurement systems would cost the federal government less than \$5 million over the next year. In addition, exempting the FAA from personnel requirements and allowing the agency to offer wages that are competitive in the private market, in order to retain its most qualified employees, could significantly increase the FAA's personnel costs. However, enacting S. 1239 could reduce the FAA's costs by streamlining the agency's acquisition process through procurement reform. Streamlining the process

could lead to savings in administrative, operation, and maintenance costs. On the other hand, if the procurement system is streamlined, the rate at which the facilities and equipment program spends its funds could increase. Most of these personnel and procurement reforms have already been enacted into law; the 1996 transportation appropriations bill (Public Law 104-50) includes essentially the same reforms as contained in S. 1239. CBO cannot estimate the additional budgetary impact of the reforms in S. 1239 because it is not clear how they would be carried out or if they would achieve their goals. For example, the General Accounting Office has reported that the FAA's acquisition problems have less to do with the procurement process than with the extremely complex systems that it has tried to acquire.

S. 1239 would provide for the development of a personnel management system for the FAA, in consultation and negotiation with representatives of FAA's employees. The bill would require these negotiations to be completed 90 days after enactment. If no agreement is reached within 90 days, the bill would require the use of the Federal Mediation and Conciliation Service (FMCS) to reach an agreement. The FMCS is an independent agency of the federal government, which performs mediation, arbitration, and alternative dispute resolution services for both federal and private disputes. In fiscal year 1995, \$31 million was appropriated to this agency, and the agency conducted over 22,000 mediation conferences. CBO estimates that the additional mediation required by S. 1239 would cost less than \$500,000.

Other Administrative Costs. S. 1239 would require the FAA to establish a Management Advisory Committee and an innovative financing panel, expedite its rulemaking process, and carry out various studies. These requirements would cost less than \$2 million a year, beginning in fiscal year 1996.

6. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enactment of S. 1239 would affect direct spending; therefore, pay-as-you-go procedures would apply to the bill.

The bill would impose several new user fees. The new fees would be immediately available for expenditure, but collections would come in faster than money would be spent. The net impact would be a small net decrease in outlays in the initial years, as shown in the following table.

[By fiscal years, in millions of dollars]

	1996	1997	1998
Change in outlays	—	—6	—6
Change in receipts	(1) ¹	(1) ¹	(1) ¹

¹ For purposes of this estimate, CBO assumes that all fees under S. 1239 would be classified as offsetting receipts (negative outlays).

7. Estimated cost to State and local governments: S. 1239 would allow the Federal Aviation Administration (FAA) to impose fees on users of air traffic control services, including state and local governments, within one year of enactment. CBO cannot determine what types of fees the FAA might impose on state and local governments or what percentage of costs they would try to recover. Based

on a cost allocation study undertaken for the FAA, CBO estimates that the maximum cost to civilian governments (including federal) would be approximately \$50 million a year (assuming full recovery). Our review of aircraft registration data suggests that more than half of these costs would be borne by state and local governments.

8. Estimate comparison: None.

9. Previous CBO estimate: On November 22, 1995, CBO transmitted a cost estimate for H.R. 2276, the Federal Aviation Administration Revitalization Act of 1995, as ordered reported by the House Committee on Transportation and Infrastructure on November 1, 1995. S. 1239 and H.R. 2276 contain similar reforms. However, H.R. 2276 would make the FAA an independent agency and take the Airport and Airway Trust Fund off-budget. In addition, H.R. 2276 does not contain the new fees that would be established under S. 1239.

10. Estimate prepared by: Federal Cost Estimate: John Patterson, Jeanette Van Winkle, and Christi Hawley. State and Local Cost Estimate: Marc Nicole.

11. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The user fee systems developed under the bill will require a new approach for the determination and collection of the user fees. However, the overall number and types of businesses and individuals regulated by the FAA is not expected to increase. Currently, individuals or businesses flying over the United States utilize this country's ATC services without compensating the United States for such services. This bill would enable the FAA to charge a fee for providing ATC services for those overflights. As a result, a new fee system would be required and would apply to a new group of individuals and businesses.

The regulatory and rulemaking reforms contained in the bill are expected to reduce the level and nature of current FAA regulation of the aviation community.

The streamlined procurement and personnel systems developed pursuant to the bill may lead to fewer regulations and less paperwork for potential FAA contractors and suppliers as well as new job applicants.

ECONOMIC IMPACT

Unneeded or unduly burdensome regulations ultimately should be eliminated or refined because of the regulatory reform provisions contained in the bill. The economic impact of regulations would decrease for affected individuals or groups.

When the new user fee systems go into effect, the economic impact is somewhat difficult to estimate because the precise nature

and extent of the fee systems cannot be known until they are developed. Nevertheless, such fee systems are expected to have some economic impact on the affected segments of the aviation community and its related industries. For example, manufacturers of aircraft and related products are likely to be impacted because they are likely to pay for the first time fees related to the certification process. It is significant, however, that any such impact would be substantially less than the impact on manufacturers that would result from a reduced FAA budget that failed to address the need for timely certification services. Furthermore, the failure to act on the bill may adversely impact the overall profitability of the aviation industry if budget constraints force service reductions.

By contrast, if a system of ATC fees is implemented, it could have a significant, positive impact on the air carrier industry and those who use its services. As discussed in a CBO report, if the FAA and users of the ATC system recognize the costs of the system in the form of fees and factor them into operational decisions, the ATC system can become more efficient as a whole. (See, "Paying for Highways, Airways, and Waterways: How Can Users Be Charged?" Congressional Budget Office, May 1992.) The willingness of users to pay fees for ATC services also serves as an indication of which additional investments should have the greatest benefits and should help FAA set priorities for such things as phasing in new technologies and equipment. Air carriers estimate that delays and inefficiencies in the ATC system cost the industry and its customers \$3.5 to \$5 billion annually. Effective ATC user fees could have a tremendously beneficial economic impact if the ATC system becomes more efficient.

PRIVACY

This legislation will not have any adverse impact on the personal privacy of the individuals affected.

PAPERWORK

Although some current paperwork is likely to be reduced when the current systems of paying excise taxes are replaced with the new user fee systems, any such new systems are likely to involve a net increase in paperwork for affected parties. Nevertheless, the Committee and those paying the new fees will keep pressure on the FAA to reduce the burden of new paperwork through development of cost effective methods of fee collection. If, as expected, current rules and regulations are eliminated or amended due to regulatory reforms contained in this bill, affected individuals and businesses may have reductions in paperwork.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title and table of sections

Section 1 cites the short title of the bill as the "Air Traffic Management System Performance Improvement Act of 1996". This section also contains a table of sections for the entire bill.

Section 2. Definitions

Section 2 defines the terms “Administration”, “Administrator”, and “Secretary” for the purposes of this legislation.

Section 3. Effective date

Section 3 establishes that the provisions of the bill will take effect 30 days after enactment of the legislation.

TITLE I—GENERAL PROVISIONS

Section 101. Findings

Section 101 sets forth a series of findings establishing the general basis for enactment of the provisions contained in the bill. The findings recognize, for example, the unique character of the FAA’s activities and the need for personnel, procurement, and funding reform.

Section 102. Purposes

Section 102 sets forth six critical purposes underpinning the bill.

Section 103. Regulation of civilian air transportation and related services by the Federal Aviation Administration and Department of Transportation

Section 103 amends section 106 of title 49, United States Code, to provide the FAA Administrator express autonomy and authority with regard to the internal functioning of the agency. As the current law provides, the FAA Administrator would be appointed by the President, with the advice and consent of the Senate, for a fixed, 5-year term. The Committee believes that helping to ensure that future Administrators remain in their position for the duration of their terms is of the utmost importance, because frequent turnover in the past has had a detrimental effect on the agency.

Some authority previously transferred to the DOT under the Department Of Transportation Act (P.L. 89-670) would be recommitted to the FAA under this section. Pursuant to this section, the Administrator would be the final authority for: the appointment and employment of all FAA employees (except for political appointees); the acquisition and maintenance of FAA property and equipment; the promulgation of all FAA rules and regulations (except as otherwise specifically provided in the bill); and for any obligation, authority, function, or power addressed in the bill.

This increased autonomy for the Administrator stems from concerns that the DOT, on occasion, has unnecessarily involved itself with the operations and activities of the FAA. In that regard, this section specifically preserves the Administrator’s existing authority for exercise by the Administrator, reaffirming that, as envisioned in the enactment of the provisions of existing section 106 of title 49, Congress did not intend that the FAA’s operational, safety, and technical capabilities be duplicated within or exercised by the DOT. This section complements and affirms these existing FAA safety authorities by providing the Administrator additional autonomy and authority to better manage activities of the agency without undue second-guessing or interference.

This section enables the Administrator to delegate his or her functions, powers, or duties to other FAA employees. Further, the Administrator would not need to seek the approval or advice of the DOT on any matter within the authority of the Administrator. Nevertheless, the FAA remains within the DOT, which would continue to provide general oversight of the agency as well as cooperate with the more autonomous FAA. The FAA must remain accountable, especially given the considerably enhanced authority it is provided in this bill. Although the DOT has some role in that regard, it should not interfere in the FAA's purely internal workings.

This section also gives the Administrator some voice in the selection of the eight political appointees who serve under him or her. The President would consult closely with the Administrator when considering FAA appointments to ensure harmony and stability within the FAA's leadership. The Committee strongly believes the FAA should be a professional, service-oriented organization. Political appointees should be chosen based on their appropriate skills that will further the mission of the FAA, consistent with the Administration's policies. The leadership of the FAA should be chosen based on the knowledge, expertise, and experience of its members, and for their commitment to a safe, effective, and efficient national air transportation system.

This section adds a definition of "political appointee" to the statute. This section also preserves all authority vested in the Administrator (by delegation or by statute) prior to enactment of the bill. Nothing in this bill is meant to take anything away from any of the current powers, duties, or authority resting with the FAA or its Administrator.

Section 104. Regulations

Section 104 affirms the Administrator's authority to issue, rescind and revise such regulations as necessary to carry out the functions of the FAA. The Administrator would be required to act upon a petition for rulemaking within six months by dismissing the petition, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking (NPRM) or advanced notice of proposed rulemaking (ANPRM). This provision is meant to address concerns the FAA is not sufficiently responsive to rulemaking petitions filed by interested parties.

This section also requires the Administrator to issue a final regulation, or take other final action, on an NPRM within 18 months of the date it is published in the Federal Register (or within 24 months in the case of an ANPRM). This section is intended to address criticism by some in the aviation community that the FAA's current rulemaking process often takes too long. This section also recognizes that, because very few rules will be submitted to the DOT under the new provisions, the FAA can be held more accountable for timely performance in its rulemaking.

Under this section, the DOT's authority to review FAA rules is limited. In specified, limited circumstances, the FAA could not issue certain regulations without the prior approval by the DOT. The DOT Secretary would have 45 days to review, for approval or disapproval, any FAA regulation likely to result in an annual, aggregate cost of \$50 million or more to state, local, and tribal gov-

ernments, or to the private sector. The DOT Secretary would also have 45 days to review "significant" regulations, which subsection (b)(1) specifies are rules that, in the judgment of the Administrator (in consultation with the Secretary, as appropriate), are likely to: have an annual effect on the economy of \$100 million or adversely affect in a material way other parts of the society; be inconsistent or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates. The criteria for determining a "significant" regulation are modeled on Executive Order 12866 as printed in the Federal Register on October 4, 1993 (Vol. 58, No. 190).

This section also provides that in an emergency, the Administrator may issue regulations that require DOT approval without obtaining such prior approval. Such regulations, however, are subject to DOT ratification, and would be rescinded within 5 business days without such ratification.

Under this section, the Administrator also would issue non-significant regulations or other actions that are routine, frequent or procedural in nature, without review or approval by the DOT. Examples of routine or frequent actions that are non-significant include standard instrument approach procedure regulations, en route altitude regulations, most airspace actions, and airworthiness directives. The DOT also would not be authorized to review "rules of particular applicability," such as exemptions, operations specifications, and special conditions, all of which apply to one individual or entity, unless such exemptions met the definition of significant in this section.

Finally, this section requires the FAA (three years after the bill is enacted) to review "unusually burdensome" regulations that are at least three years old. "Unusually burdensome" regulations are defined as those that result in the annual, aggregate expenditure of \$25 million or more by State, local, and tribal governments, or by the private sector. Such regulations are to be reviewed to determine: the accuracy of the original cost assumptions; the overall benefit of the regulations; and the need to continue such regulations in their present form. This section also provides that the Administrator may review immediately any three-year-old regulation in force prior to enactment of the bill, such as rules issued in 1988 regarding certification of foreign maintenance facilities used to repair or maintain U.S. aircraft. The Committee expects the FAA to use the MAC and the Aviation Rules Advisory Committee (ARAC), as appropriate, in the process of any of these reviews. Of course, with regard to any reviewed regulations, FAA should eliminate those that are truly harmful or burdensome, revise or modify those with some overall value, and retain those that are truly worthwhile and promote a safe and healthy ATC system and aviation industry.

Section 105. Personnel and services

Section 105 provides that the Administrator may appoint and fix the compensation of necessary employees and officers of FAA and fix their compensation. This section also provides that, in fixing the compensation and benefits of employees, the Administrator may

not engage in any type of collective bargaining, except as provided for under section 203(c). Further, this section provides that the Administrator shall not be bound by any requirement to establish compensation or benefits at particular levels.

This section also provides other personnel authority to the Administrator, including, for example, the authority to hire experts and consultants and to use the services of personnel from any other Federal agency.

This section represents one more element of the bill that defines the Administrator's authority over internal FAA matters. It provides the Administrator with powers and authority similar to those given to the head of an independent agency.

This section also provides that officers and employees shall be appointed in accordance with civil service laws and compensated in accordance with title 5, United States Code, except as otherwise provided by law. This particular provision applies only to the time period between the effective date of the bill and the effective date of the new personnel system implemented under section 203.

Section 106. Contracts

This section provides broad, general authority for the Administrator to enter into contracts, leases, cooperative agreements, and other transactions, as necessary to carry out the functions of the FAA.

The Committee encourages the use of authority granted under this section to contract with foreign governments for services the FAA can provide civil aviation authorities in other countries as a means of generating revenue. The FAA has indicated that significant revenue may be generated from such arrangements. The FAA should provide an annual summary of such revenue to the Committee. In addition, the term "cooperative agreements" is included in this section to ensure that the FAA can receive in-kind goods or services from an individual, business, or government. Such goods or services may be used to offset any relevant or applicable fees one may be required to pay the FAA.

The Committee also encourages the FAA to examine the possibility of using authority under this section to enter into lease arrangements for the facilities and equipment needs of the FAA. Leasing arrangements may lead to substantial cost savings and efficiency gains at the agency.

Section 107. Budget

Section 107 establishes a requirement for the Administrator to prepare a budget for the FAA, beginning with the fiscal year following the first fiscal year in which the FAA is funded entirely by user fees. The Administrator would be required to consider recommendations of the Secretary concerning modifications to the budget, and may modify the FAA's budget to adopt any recommendation made by the Secretary. This section also establishes a process for notifying the Congress of budget and legislative actions the Administrator has submitted to the Office of Management and Budget or the President. Significantly, the section requires that the Administrator include with any report or request for an increase in the budget established under this section, or for an in-

crease in user fees, an explanation of the need for the increase and a statement of the steps taken by the FAA to reduce costs and improve efficiency.

If the FAA eventually becomes entirely user funded, the FAA will be able to spend its funds without appropriations actions. The Committee, however, does not expect this to occur prior to FY 2003. The Committee also recognizes the need for the Congress to continue appropriations from the General Fund, particularly for those segments of the aviation community that are not required to pay all the costs of the government services and benefits they receive and for general FAA functions, including inspections and administrative and overhead costs not directly related to service activities.

Section 108. Facilities

This section provides the Administrator with authority to use or accept, with or without reimbursement, services, equipment, personnel, and facilities of any other Federal agency or public or private institution. Such acceptance would not constitute an augmentation of the Administration's budget. Heads of other Federal agencies would be asked to cooperate with the Administrator.

Section 109. Property

This section provides broad authority to the Administrator to acquire, construct, improve, repair, operate, and maintain air traffic control and research facilities and equipment, as well as other real and personal property. Further, the Administrator is authorized to lease such real and personal property to others.

Section 110. Select panel to review innovative funding mechanisms

Section 110 directs the Administrator to establish a select panel to review and report to Congress (within 9 months after the last member is appointed to the panel) on limited innovative funding mechanisms, including government sponsored enterprises, to ensure adequate funding for specific aviation infrastructure needs, including airport capacity and safety development and ATC facilities and equipment. Panel members would include Federal government officials and representatives of the aviation industry, FAA employees, the financial community, and State and local governments. The entire panel should be appointed in a manner timely enough after the date of enactment of the bill to allow the panel to quickly begin its work and provide policy makers with funding options before fiscal year 1997, if at all possible.

The Committee strongly urges the panel to consult with the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) during its consideration of various funding mechanisms. In addition, the panel should work closely with the Committee throughout its deliberations. It is important for the panel's report to take into account the complexities of the Federal budget process, including the rules governing it. By consulting with CBO, OMB, and the Committee, the panel will make recommendations that are both feasible and reasonable.

The Committee, by this section of the bill, is looking for a limited funding prototype to demonstrate that it is possible to use innovative techniques to make improvements in the system more quickly.

The Committee attempted to work out a limited and specific plan with the Administration for an innovative financing mechanism to facilitate the implementation of modernization programs prior to the Committee's consideration of the bill. Because of the complexity of such a plan, however, an agreement could not be reached in the limited amount of time available.

Funding options will be developed by taking into account the independent studies required under section 305. However, the panel should begin exploring options and ideas before such reports are completed so that options can be selected based upon the results of the studies.

Section 111. Transfers of funds from other Federal agencies

Section 111 permits the Administrator to accept the transfer of unobligated balances and unexpended funds from other agencies to carry out functions assigned to FAA by this or other Acts.

Section 112. Management Advisory Council

Section 112 establishes a 15-member Management Advisory Council (MAC) to provide the Administrator with input from the aviation industry and community. The MAC would be comprised of designees of the Secretaries of Transportation and Defense (one each) and representatives from various segments of the aviation community who would be appointed by the President after consulting with the Senate. Members of the MAC should be selected from among individuals who are experts in disciplines relevant to the aviation community and who are collectively able to represent a balanced view of the issues before the FAA.

This section specifically provides that six of the MAC members must represent commercial air carriers, whose businesses generate the largest proportion (estimated to be more than 90 percent) of revenues flowing into the current trust fund system. Among these six air carrier representatives, at least one must represent cargo carriers, one must represent regional carriers, and two must represent major carriers earning less than \$4 billion annually in gross revenues.

The Committee believes the President should choose the members of the MAC from names provided by this Committee and the House Transportation and Infrastructure Committee. The consent of the Senate was not mandated with regard to MAC appointees because of the requirement to choose members in consultation with the Senate, and because it was determined that the formal consent process was not needed here and could add significantly more time to organizing the MAC and initiating its work. The MAC members also should not be selected based on political or partisan considerations.

The Committee does not consider the MAC to be a "paper tiger". The MAC is to be taken seriously by the FAA and the Congress. All views of each member should be taken into account so that even minority views can be adopted by the FAA if the Administrator regards such views as proper given the circumstances. In other words, this is an advisory council, not a board of directors for which a majority vote constitutes FAA policy. The Administrator must maintain objectivity and keep overriding goals and objectives,

such as ensuring ATC system safety and efficiency, above the infighting that frequently occurs within the aviation community.

The MAC also would be provided authority to review the FAA's regulatory cost-benefit process and the process through which the FAA issues advisory circulars and service bulletins.

Two other particular areas on which the MAC should focus its oversight are ATC modernization and FAA acquisition management. The past problems of the FAA in these areas are well known. The Committee does not want the FAA to be free from federal procurement rules so that it can simply acquire the wrong items more quickly. The Committee therefore believes the MAC can be a valuable resource in ensuring the FAA's Capital Investment Program emphasizes improving ATC system performance.

The Administrator would consult with the MAC on many issues including the development of user-fee systems to fund the FAA as set forth in sections 303 and 304 of the bill. In fact, the MAC Chair will set up panels or working groups (from among MAC members) that will specifically focus on user fee development.

The MAC also would provide advice and counsel to the Administrator on a regular basis. Although this section only provides that the MAC shall meet on a regular and periodic basis, or at the call of the Administrator or MAC Chair, the MAC should, at a minimum, meet on a quarterly basis.

To facilitate its advisory function, the MAC must be given reasonable access to internal FAA documents and materials. Such access, however, must be given with due consideration for privacy and proprietary concerns. This section, therefore, would subject MAC members to criminal penalties for unauthorized disclosure of commercial or other proprietary information.

Section 113. Aircraft engine standards

Section 113 vests the Administrator with new authority (currently under the Environmental Protection Agency (EPA)) to prescribe standards applicable to the emission of air pollutants from aircraft engines. Currently, the FAA only has authority over noise emission standards for aircraft engines. The Committee believes it is important for one agency to be responsible for regulating all aircraft engine emission standards so that there is consistency. Nevertheless, the FAA should work with the EPA to ensure regulations are consistent with national environmental policy, objectives, and efforts. In the past, differences between the FAA and the EPA have impeded a unified U.S. approach to consideration of international emissions standards.

This section is not meant to alter or eliminate any existing federal regulations or standards regarding aircraft engine emissions until and unless modified or amended by the Administrator.

Section 114. Rural air fare study

This section requires the DOT Secretary to conduct a study of rural air fares, and to provide a report to the Committee within 60 days after enactment of this bill. The study would encompass an analysis of the types of air service provided to rural communities as well as competitive aspects of such air service. The requirement to conduct this study stems from concerns over any detrimental ef-

fects of deregulation of the air carrier industry on small communities throughout the nation.

TITLE II—FEDERAL AVIATION ADMINISTRATION STREAMLINING PROGRAMS

Section 201. Innovative program for air traffic control modernization

Section 201 directs the Administrator, in consultation with government and non-government experts, to develop within 180 days after enactment of the bill a new acquisition management system for procurement of all goods and services for the FAA. This section of the bill is designed to free the FAA from burdensome procurement requirements and to permit the agency to operate in a more business-like manner. In developing the system, the Administrator would be allowed to waive many federal procurement laws. The plan for the new system would be submitted to Congress for review, and would go into effect 30 days thereafter. The FAA is strongly urged to use the authority granted in this section to hire experts to assist in the development of the system. The FAA is allowed to sole source the contract to retain such experts so that the reform of the system is not held up by the system itself.

Any innovative system should consider opportunities for small businesses and small business concerns owned and controlled by socially and economically disadvantaged individuals. Outreach to these businesses will be necessary, and the FAA should also encourage its contractors to make timely payments to its small business subcontractors.

Any significant modification to the acquisition management system must be submitted to Congress for review prior to implementation, in the same manner as required for the initial acquisition management system. Incidental or clerical changes, however, need not be submitted for review. After the procurement system has been in effect for three years, it must be reviewed by outside experts to determine whether the system has been streamlined without creating waste, fraud, or abuse.

The DoD would operate under the same procurement system when it is engaged in joint acquisitions with the FAA related to the national air traffic control system, in which the DoD plays an integral part.

This section and section 203 (personnel system reforms) are similar to provisions in the FY 1996 DOT Appropriations bill (P.L. 104-50) that give the FAA authority to implement new procurement and personnel systems as of April 1, 1996. Title II of this bill builds upon those provisions in many ways, including a required review of the new systems by Congress. During Senate debate of the FY 1996 DOT Appropriations bill, an amendment was offered that would have removed the provisions on FAA personnel and procurement reform. It was tabled, however, in a rollcall vote of 59 to 40. By enacting the personnel and procurement reforms in the FY 1996 DOT Appropriations bill, it is clear that Congress recognizes the critical need for such reforms. The Committee, however, strongly believes even more must be done in this area and that this bill fully addresses that concern.

Congress plays an important role in this reform process because the FAA is given such wide latitude in most reform proposals. It is not intended that Congress should micromanage the process of development, but it must ensure industry competition, agency fairness, and the right to challenge FAA decisions. Because the FAA is rather unique, it needs these Title II reforms to streamline its operations and be able to meet its unique requirements for such things as modern equipment and software. These procurement and personnel reforms, therefore, are not intended to be prototypes for reform of other parts of the Federal government, but rather as modifications required to meet the special needs of the FAA for its equipment modernization and safety function.

Section 202. Air traffic control modernization reviews

Section 202 establishes a safeguard, built into the procurement system, that would require the FAA to terminate facilities and equipment programs that are 50 percent or more: (1) over cost, (2) below performance goals, or (3) behind schedule. The Administrator could waive the termination requirement if a termination would be inconsistent with the safe and efficient operation of the national air transportation system. Also, the FAA would be required to consider terminating any program that is 10 percent or more: (1) over cost, (2) below performance goals, or (3) behind schedule. This section, in effect, requires the FAA to set realistic goals and standards for major acquisitions, which FAA has had problems doing in the past.

Section 203. Innovative program for Federal Aviation Administration services

Section 203 directs the Administrator to develop within 180 days after enactment of the bill a new personnel system for the management, compensation, and advancement of FAA employees. The Administrator must develop the system in consultation with FAA employees and in negotiations with the exclusive bargaining representatives of employees. If the Administrator fails to reach agreement with such bargaining units within 90 days after enactment of the bill, the parties will engage the services of the Federal Mediation and Conciliation Service. If agreement is not reached following mediation, the Administrator must include in the plan submitted to the Congress the objections of the exclusive bargaining representatives and the reasons for the objections. In negotiating the new personnel system, the Administrator and the exclusive bargaining representatives would be required to use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units as well as within the FAA as a whole. Nothing in this bill, therefore, prohibits the exclusive bargaining representatives from assisting in identifying cost savings in the procurement system as well as the new personnel system.

The overriding goal of FAA reform is the enhancement of aviation safety. In this regard, the cost-saving efforts of the FAA and the exclusive bargaining representatives in the development of a new personnel system is not intended to, nor should it, adversely impact aviation safety. Any cost-saving effort that adversely affects aviation safety should be deemed contrary to the public interest and not be developed or implemented. Further, in the annual meet-

ing mandated by this section between the FAA and the exclusive bargaining representatives to identify additional cost savings within the agency, no such cost savings should be contrary to the public interest and any identified costs savings that have an adverse effect on aviation safety should not be acted upon by the FAA. Reasonable discovery and inspection of FAA documents pertaining to costs associated with personnel, procurement, and other operational budgets should be made available for the above cost-saving purposes.

The plan for the new personnel system would be submitted to Congress for review, and would go into effect not earlier than 30 days thereafter. Although the new system would be exempt from many Federal personnel laws and regulations, certain key Federal laws protecting workers' rights and benefits would still apply to the FAA and its employees, including retirement, health and life insurance benefits, and veterans preference.

The FAA is strongly urged to use authority granted in this section to hire experts to assist in the development of the new personnel system. The FAA is allowed to sole source the contract for retaining such experts so that the reform of the system is not delayed by existing burdensome Federal regulations.

The new personnel system would be evaluated after three years by outside experts to ensure it has been effective. In addition, any significant modification must be submitted for Congressional review prior to implementation in the same manner as required for the initial personnel management system. Incidental or clerical changes, however, need not be submitted for such review. The basic rate of pay for any FAA employee, however, is capped by the basic rate of pay for the Administrator, as set by statute.

TITLE III—SYSTEM TO FUND CERTAIN FEDERAL AVIATION ADMINISTRATION FUNCTIONS

Section 301. Findings

Section 301 sets forth fifteen findings establishing the general basis for the provisions in the bill related to FAA funding. These findings concern the important services provided by the FAA in a variety of critical areas that benefit the users of the air transportation system.

Section 302. Purposes

Section 302 sets forth eight critical purposes underlying the enactment of Title III of the bill. Those purposes include providing a financial structure for the FAA that would enable it to support the future growth in the national aviation, ATC, and airport system, and ensuring that funding obtained by user fees established under this title would be dedicated solely for the use of the FAA.

Section 303. User fees for various Federal Aviation Administration services

Section 303 creates a new section 45301 under Chapter 453 of title 49, United States Code, providing authority, with certain limitations, for the FAA to establish a performance-based system for the collection of fees for various services it provides. Proposed fees

under new section 45301(a)(1) would be submitted by the Administrator to the Congress, not later than 1 year after the bill's enactment, for FAA services other than air traffic control, including training, licensing, regulatory proceedings, and activities directly necessary for certification. Not later than 6 months after the date of enactment, the Administrator would transmit a proposed fee system under new section 45301(a)(2) for services (other than air traffic control) provided to a foreign government and for air traffic control services for foreign carrier overflights, which could include trans-oceanic flights that use U.S. ATC services. Currently, international overflights receive what some call a "free ride" through the ATC system because they consume services, but contribute nothing in trust fund taxes. Furthermore, many, if not most, other countries charge our air carriers for overflights.

The concept of a performance-based fee system is at the heart of the bill. By using the term performance-based, the legislation seeks to create fee systems that would expose (to the MAC and Congress) FAA costs of providing each and every service, and provide incentives for the FAA to improve its performance, as an agency in general, and the ATC system's performance. The existing FAA accounting system masks the costs of providing the various services, which in turn allows cross-subsidies, misallocations, and inefficiencies. By knowing the cost of a particular service, there will be a basis from which to propose alternate ways of providing that service. Moreover, determining the costs of the services provided by the FAA is a critical initial step to reforming the FAA. The FAA will need this information early in the process to be able to make informed decisions as to how best to proceed on reform. A subsequent step would be to determine what FAA can charge for the services it provides based in part on these cost determinations and input from the MAC. One example of how such cost information can be helpful was the FAA's determination that pre-flight services at FAA flight service stations, which had cost approximately \$9 per transaction, could be provided by private businesses for about \$2 per transaction.

The new fee system would automatically go into effect 45 days after being submitted to Congress, unless disapproved by Congress. (Section 305 also mandates that most fees cannot go into effect until 6 months after independent studies are completed concerning the FAA's budget needs and cost allocations, which may affect the effective date of the new fee system.) The disapproval procedure in the bill is similar to the one used in the military base closure process (i.e., Base Closure and Realignment Act, P.L. 100-526).

A variety of protections or limitations on the fee authority are prescribed. For example, in developing fees, the Administrator must consider the impact on segments of the aviation industry and the fair value or cost of the service provided. The Administrator would be prohibited from charging fees for the direct costs of accident investigations, or for the costs of inspections of, or enforcement actions initiated against, any segment of the aviation industry. Such activities or functions are separate from anything that can reasonably be regarded as a service. Further, in the express case of aircraft manufacturing certification services, the section prescribes a series of factors governing the establishment of such

fees. In addition, the Administrator's otherwise broad fee authority would be circumscribed by an express prohibition against charging for administrative and overhead costs not directly related to aircraft manufacturing certification service activities.

In developing user fees under this section, the Administrator also is called upon to consult with the MAC and, to the maximum extent feasible, to seek to develop a consensus. Any segments of the aviation community affected by the fees, but not represented on the MAC, should also be consulted on development of fees applicable to such segments.

This section prohibits the Administrator from implementing a fee under new section 45301(a)(1) unless, in the preceding fiscal year, the sum of the outlays from the Airport and Airway Trust Fund exceeds the receipts of such Trust Fund. Also, a fee for aircraft manufacturing certification services could not be imposed before a fee is imposed for air traffic control services under section 304. This provision ensures that aircraft manufacturers will not have fees imposed upon their segment alone without other parts of the aviation industry being affected at the same time.

Additionally, fees imposed under new section 45301(a)(1) would terminate 3 years after becoming effective. The Administrator must submit a proposed replacement fee system to the Congress, not less than 6 months before the automatic termination date of the existing fee system. Any replacement system must be developed in consultation with the MAC. Moreover, when proposing a replacement fee system, the Administrator must transmit with the proposed system a report, conducted by independent experts, of the effectiveness of the standards established for the fee system the proposed system is intended to replace. The new fee system would be subject to the same Congressional disapproval process as the original fee system. The legislation does not provide a mechanism by which the Administrator can raise or modify user fees established pursuant to new section 45301(a)(1) apart from the process prescribed in this section.

Within six months of the bill's enactment, the FAA also must enter into an agreement with the DoD setting forth how the DoD will reimburse the FAA for ATC services provided to the DoD. Currently, the General Fund contribution to the FAA budget is, in part, meant to compensate for DoD use of ATC services. Although the DoD provides ATC services in conjunction with the FAA, the FAA estimates the DoD annually receives a net benefit of approximately \$400-600 million. FAA use of the global positioning system (GPS) should not be a significant factor in the reimbursement agreement with the DoD. (GPS was not designed for civil aviation usage, and the FAA must spend hundreds of millions of dollars on programs such as the Wide Area Augmentation System (WAAS) so that GPS can be used effectively for navigation of the airways.)

The Committee expects that any fees and charges developed under new section 45301(a)(1) shall not, to the maximum extent possible, unreasonably restrain competition by being, for example, unfair, unreasonable, unjustly discriminatory among current or potential users of the FAA's services, or unreasonably disadvantageous to new entrants or entrepreneurs. Any proposed fees also should not provide the wrong incentives to the FAA. For example,

the use of per hour charges only for certification activities might encourage the FAA to spend too much time performing that service. However, the Committee is not prohibiting the FAA from using time as one or more of the factors upon which a fee can be based. Such a determination will be made following input from affected parts of the aviation community and consideration of relevant circumstances.

The fee systems authorized under this section and section 304 are not meant to provide a “blank check” to the FAA. The agency must commit itself, in no uncertain terms, to keeping its own costs down rather than increasing fees. The MAC and the independent studies on FAA budget needs and cost allocation should help keep pressure on the FAA to justify its spending and become more efficient. The FAA also must maximize its collection of existing fees and utilize existing authority to impose fees where it is not currently doing so.

It is envisioned that the FAA will move as quickly as possible to develop these systems. This is particularly relevant for the proposed fees on international overflights and for non-ATC services provided to foreign governments. The sooner that funds can be drawn from those services, the better off the FAA will be in the short-term.

Section 304. User fees for air traffic control services

Section 304 requires that within one year of enactment of this legislation, the Administrator submit to Congress a proposed performance-based fee system for users of ATC services. With limited exceptions (e.g., international overflights), such fees could not be imposed on a particular segment of the aviation community (e.g., air carriers) unless the user taxes applicable to that particular segment have been terminated. General aviation sport and recreation aircraft, agricultural aircraft, and certain business aircraft would be exempt from ATC fees.

ATC service fees would be developed in consultation with ATC system users through the MAC. Any proposed system for ATC user fees would be subject to Congressional review and, unless disapproved by Congress under the procedure set forth in section 305, would go into effect after a 45-day review period.

The concept of performance-based fees, which is discussed above with regard to section 303 fees, is perhaps more applicable to this section of the bill and the air traffic management (ATM) part of the ATC system. One measure of the performance of the current ATM system is the air carriers' estimate that ATC/ATM delays and inefficiencies cost them and their customers \$3.5 to \$5 billion per year. FAA and NTSB estimates run even higher. As noted previously, approximately two-thirds of the delays are attributable to bad weather. The costs resulting from these delays add to the price passengers pay for tickets, as well as act as a drag on the U.S. economy, which increasingly relies upon a growing and efficient air transportation system. The FAA's current financing and cost-accounting structure is rife with disincentives for the agency to improve its performance. Without a new way of operating in this regard, it will be difficult or impossible for the FAA to become the efficient and effective organization the Committee expects it to be.

The FAA is expected to commit itself to tying a level of performance to its fees and services.

In developing a fee system under this section, the Administrator is required to consider the cost of providing each service and a number of other factors, such as the impact on air fares (including low-fare, high frequency service) and competition, the unique circumstances associated with inter-island air carrier service in Hawaii, the impact on service to small communities, and the impact on services provided by regional carriers. Moreover, the Chairman of the Aviation Subcommittee believes that any new fees developed should not be based solely on arrivals and departures. Because of their location on our nation's only island State, Hawaii's residents and its largest industry, tourism, depend almost exclusively on affordable and frequent inter-island air service. Hawaii lacks the traditional alternate means of transportation available in the contiguous States. Accordingly, the Committee is concerned about any fee systems developed pursuant to the bill that substantially increase the financial burden of Hawaii's inter-island passengers or shippers, because of the impact it would have on the cost of inter-island service for Hawaii's residents and visitors. The Committee expects, to the maximum extent possible, that Hawaii's unique situation be fully considered in devising any new fee systems.

For purposes of the bill, it also is intended that commercial passenger airlines, including that portion of their operations devoted to the carriage of freight, cargo, property, etc. (often referred to as "belly freight carriage"), be considered a separate segment of the aviation industry. It is further intended that commercial cargo air carriers, which do not devote operations to the commercial transportation of passengers, are to be considered as constituting a second, separate segment.

Although business jets are sometimes considered a part of the general aviation community, this section recognizes their unique nature and defines them as a separate segment of the aviation community. Business jets, as defined in this section, impose a significant impact upon the ATC system that sport and recreation type aircraft usually do not. Since business aircraft, especially the high-performance turbine-powered variety, fly almost exclusively within the ATC system, they impose a much heavier burden on the system than do the small, piston general aviation aircraft that use the system much less intensively. The most recent FAA cost allocation data from 1991 indicate that business jets effectively receive an annual subsidy of as much as \$400-700 million for their use of the ATC system. These jets impose costs of over \$800 million per year on the ATC system, while jet fuel taxes paid by business jets amount to only about \$90 million per year. If it is confirmed by independent studies required by this legislation that business jets are not paying their "fair share" through excise taxes on jet fuel, business jets may be required to pay new ATC user fees or have their excise taxes increased.

As with the section 303 fees, this fee system would terminate automatically after a three-year period. Six months before the first system terminates, a replacement fee system would be developed with the MAC and submitted to Congress under the same disapproval process as discussed above. Further, when proposing a re-

placement ATC fee system, the Administrator must transmit with the proposed system a report, conducted by independent experts, of the effectiveness of the standards established for the original fee system. The legislation does not provide a mechanism by which the Administrator can raise or modify ATC user fees (except for international overflights) apart from the process prescribed in this section.

As previously mentioned, sport, recreation, and agricultural aircraft are exempted from ATC fees under this section. Sport and recreation aircraft are defined as non-powered aircraft, rotorcraft, and reciprocating piston-engine aircraft not used to provide air carrier service. Except for aircraft involved in air carrier service, aircraft involved in other commercial ventures are exempted from ATC fees so long as they meet the other criteria described in this section. In other words, to be exempt from ATC fees, an aircraft need not be used solely for "sport and recreational" purposes. The exemption for agricultural aircraft is meant to cover crop-dusters or similar aircraft used directly for growing crops. However, an aircraft is not exempt solely because it is owned by an agricultural business or concern. These portions of the general aviation community are exempted because of concerns they would avoid using the ATC system if such use meant incurring a fee. If such members of the general aviation community did not use the ATC system, the safety of the entire system could be jeopardized. In addition, the administrative costs of imposing ATC fees on much of the general aviation community could be excessive. It is estimated that this exemption would cover 93 percent of all U.S. registered aircraft.

Although the bill exempts most of general aviation from ATC fees, it is not necessarily intended general aviation should not pay more into the system. The independent cost allocation study mandated by section 305 may ultimately confirm the belief of many observers (and the results of other studies) that taxes generated by general aviation do not cover its allocated share of FAA costs. If that is the case, then a means for general aviation to pay its "fair share" should be considered. As mentioned in one of the findings to the bill, to the extent the Congress determines that a certain segment of the aviation community is not required to pay all of the costs of the government services which it requires and benefits which it receives, the Congress should appropriate the difference between such costs and any receipts received from such segment. The general aviation community has expressed its support for the current funding structure as an efficient and transparent means of collecting money for their usage of the system. In fact, representatives of the general aviation community have told the Committee they would rather have their taxes increased than pay ATC user fees if the FAA's budget needs can be demonstrated and justified. These representatives, however, have acknowledged that the methods of providing funds to the FAA must be changed. The demonstration and justification of the FAA's budget needs will occur with the completion of the outside, independent, and objective studies ordered in section 305.

The Committee expects that any fees and charges developed under this section must not, to the maximum extent possible, unreasonably restrain competition by being, for example, unfair, un-

reasonable, unjustly discriminatory among current or potential users of the FAA's services, or unreasonably disadvantageous to new entrants or entrepreneurs. The legislation envisions that, unless otherwise specified, ATC fees should be broadly based, covering the full range of direct and indirect costs of air traffic-related services and activities, including, for example, costs of facilities and equipment, research and development, and airport infrastructure grants.

Section 305. Administrative provisions

Section 305 creates a separate, dedicated account (established in the Treasury) for all new fees and other receipts (except for those associated with the Aviation Insurance Program) collected by the FAA. The receipts and disbursements of this account would be classified as offsetting collections and not be subject to budget caps, the appropriations process, or sequestration. Expenditure of amounts from the account could be used only for Congressionally authorized activities of the agency. This Treasury account goes very much to the heart of this bill by ensuring that revenues from the aviation community go directly to the FAA for the needs of the national air transportation system. Amounts credited to the account would not include amounts collected by the Administrator which, on the effective date of this Act, would be required pursuant to law to be credited to the General Fund of the Treasury. Such excluded amounts would continue to be credited to the General Fund by the Administrator.

This section also provides that within 6 months after enactment of the bill, the Administrator must select persons with no direct financial interest in the results of the studies to perform independent studies assessing FAA costs attributable to each segment of the aviation system and reviewing the funding needs and assumptions for operations, capital spending, and airport infrastructure of the FAA. Costs attributed to users should reflect the full range of FAA expenditures and activities associated directly or indirectly with a particular aviation segment, including, for example, costs of airport infrastructure financed in whole or in part by the FAA. Fees developed under sections 303 and 304 of the bill (except those fees for international overflights and services provided to foreign governments) could not be implemented prior to 6 months after the independent studies have been submitted to the Congress. These studies are urgently needed by the Congress and the aviation community so proper evaluation of the FAA's financial picture can be done using a single, objective set of numbers and assumptions.

According to the GAO, since the advent of the National Airspace System (NAS) plan in 1982, the FAA has spent more than \$19.8 billion attempting to fulfill this blueprint for the future. Under the more ambitious and recently revised Capital Improvement Plan (CIP), it is anticipated that at least another \$17.5 billion will be spent through the early years of the next century. The scope, complexity, and cost of the FAA's requirements appear to necessitate a complete, top-to-bottom review. The six-month delay between completion of the reports and fee implementation allows time for the results of the studies to be considered in developing fees.

This section of the bill directs that the independent review of FAA spending, including airport capital infrastructure programs and needs, must be conducted prior to discussing any airport financing. The Committee believes that the report must contain an analysis of current and future spending of the entire FAA, including airport capital needs. A major premise of this legislation is that old assumptions and old ways of doing business must be reevaluated and updated. This includes an independent assessment of the FAA's needs and the nation's airport capital needs to ensure that capacity is able to meet demand. As a result, the Congress and the FAA must be in a position to determine which projects expand capacity and enhance the safety and security of the national air transportation system.

The review and report should provide assistance to Congress as to appropriate reforms, which will allow the FAA and airports to more efficiently utilize and maximize Airport Improvement Program (AIP) dollars for necessary capacity, safety, and security.

With regard to funding mechanisms, the study also should examine all existing funding options available for airport development. This is not limited to AIP and Passenger Facility Charges (PFCs), but should include airline and concession revenues, non-aeronautical revenues, and state and local funding sources. The Committee wants the study to evaluate the role that existing non-Federal funding sources have played and can play in financing airport capital projects. In addition, the report should identify specific instances in which airports have been unable to accomplish capacity-enhancement, safety or security projects because of airline interference or "majority-in-interest" clauses, and the overall magnitude of this purported problem.

The GAO recently issued a report stating that a majority of PFC funds were for terminal projects, access roads, and debt service. The Committee is concerned this program has not been dedicated to the safety, capacity, and security priorities, which the Committee identified in 1990. Because reauthorization of the AIP program must occur in the near future, the Committee will have an opportunity to closely evaluate this program and the FAA's administration of the program consistent with Congressional intent. In most instances, the carriers and airports are able to work together on funding airport projects, and the system works. However, the Committee is aware of one instance in which an airport has collected in excess of \$150 million through PFCs, but has not spent the money. The right to collect PFCs should not be abused by any airport.

The Committee expects these studies to be performed independently of the FAA. No contractor, FAA employee, or other person with a financial interest in the result of such studies shall be utilized to analyze, comment, or validate those aspects of the FAA's financial picture in which such person or entity has a proprietary interest.

The requirement for independence and detachment from the results of the studies is not limited to hardware and software providers. Consulting firms and other entities that deliver specifications, provide rationale, or otherwise were compensated by the FAA or the DOT for advice and guidance on any aspect of the FAA's needs,

should not be put in the position to comment, validate, or rationalize previous recommendations provided by such contractor. By the same token, the importance of the studies' independence is not to be taken to such extremes that consulting firms and other entities with knowledge of, expertise in, or experience with the affairs of the FAA would be excluded from consideration.

The studies required under this section also must take into account the level of the FAA's costs driven by public users, particularly the DoD. The DoD claims it does not impose a net cost on the FAA in that it provides extensive ATC services to civil aviation. The only way for these studies to be complete is if they consider the costs that the FAA and the DoD impose on each other as well as the benefits each derives from the other. Therefore, whoever conducts the studies should be allowed access to the DoD's budget records in this area so long as such access does not interfere with classified, national security matters. The studies should also take into account the fact the DoD restricts considerable amounts of the nation's airspace and such restrictions impose a financial burden upon those who use and manage the airways. If the DoD is indeed imposing a net cost on the ATC system, as the FAA and the DOT claim, Congress should be made aware of that fact.

This section also provides that when an air carrier is required by the Administrator, pursuant to this legislation, to collect a fee imposed on a third party by the FAA (e.g., a system based on a per passenger fee), the Administrator shall ensure that such air carrier may collect from such third party an additional uniform amount reflecting necessary and reasonable expenses (net of interest) incurred in collecting and handling the fee.

This section further requires that the Administrator provide to the MAC, 60 days before submitting to the Congress a proposed user fee schedule, a report justifying the need for the proposed user fees and including other specified information such as steps the Administrator has taken to reduce costs and improve efficiency within FAA.

This section requires that no segment of the aviation community shall pay more than its fully allocated costs under any fee systems developed pursuant to sections 303 and 304. The cost allocations are determined by the Administrator and must be based upon independent studies required in this section.

This section also sets forth the administrative procedure for Congressional disapproval of any user fee system submitted by the FAA pursuant to authority granted in the bill.

Section 306. Increase in spending caps under trust fund

Section 306 provides that for fiscal years 1997 and 1998, the authorization to appropriate from the Airport and Airway Trust Fund would increase to 80 percent for the FAA's Operations account and to 90 percent for the FAA's total appropriations. Currently, monies from the trust fund can only comprise the lesser of 50 percent of the FAA's Operations budget or 70 percent of the total FAA budget. This change in the trust fund spending caps will permit and is designed to encourage the spending down of the trust fund "surplus".

Section 307. Advance appropriations for Airport and Airway Trust Fund activities

Section 307 prescribes a three-year authorization and three-year appropriation cycle for the FAA to provide the agency with greater funding stability in planning its programs and activities.

Section 308. Sense of the Senate

Section 308 expresses the Sense of the Senate that the Congress must make every effort to expend the unobligated balance of the Airport and Airway Trust Fund on FAA activities.

Section 309. Rural Air Service Survival Act

Pursuant to section 309, authority to administer and operate the EAS program would be transferred from the DOT Secretary to the Administrator. Although responsibility for administering the EAS program is transferred, some language in this section refers to the DOT Secretary rather than the Administrator so that these amendments remain consistent with the provisions of the current statute. The program would be established at a \$50 million level, with authority for the program to be funded by user fees collected under this legislation, including those specifically derived from overflights. At the end of each fiscal year, if less than \$50 million has been obligated for EAS programs, the Administrator shall make those remaining amounts available under the Airport Improvement Program for grants to rural airports to improve rural air safety. This section also, in effect, repeals a provision in the current law sunseting the EAS program.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following description of the record votes during its consideration of S. 1239:

Senator Stevens offered an amendment in the nature of a substitute to the amendment (in the nature of a substitute) offered by Senator McCain (for himself and Mr. Ford). By rollcall vote of 7 yeas and 12 nays as follows, the amendment was defeated:

YEAS—7—	NAYS—12
Mr. Pressler	Mr. Hollings
Mr. Inouye—	Mr. Ford
Mr. Stevens—	Mr. Exon
Mr. Lott —	Mr. Kerry ¹
Mrs. Hutchison—	Mr. Rockefeller
Mr. Ashcroft—	Mr. Breaux
Mr. Frist—	Mr. McCain----
	Mr. Gorton----
	Mr. Bryan----
	Mr. Burns----
	Mr. Dorgan----
	Ms. Snowe ¹

¹ By proxy.

ADDITIONAL VIEWS OF SENATOR McCAIN

The following are summaries of S. 1239 providing the Subcommittee Chairman's views of the benefits of the legislation for the General Aviation and Commercial Air Carrier Industries.

SUMMARY OF BENEFITS FOR GENERAL AVIATION

RELEVANT FINDINGS (SEC. 101)

Congress must keep its commitment to users of the national air transportation system to spend down the trust fund, including the surplus.

The FAA must continue to recognize who its customers are and what their needs are.

For those industry segments that are exempt from any of the new fees (e.g., "mom and pop" GA are exempt from the new ATC fees), the Congress should appropriate funds to cover such segments' costs for the FAA and ATC services they use.

Before any new charges or fees are imposed on any industry segment, an independent review assessing the FAA's funding needs must be performed.

Before any new charges or fees are imposed, an independent study of the costs to the FAA for each aviation segment's use of safety, operational, and ATC services must be performed.

Without reform in the areas of procurement, personnel, funding, and governance, the FAA will continue to experience delays and cost overruns.

All reforms should be designed to help the FAA become more responsive to the needs of its customers.

RELEVANT PURPOSES (SEC. 102)

Establish an innovative program for procurement reform.

Establish an innovative program for personnel reform.

Create a more autonomous and accountable FAA.

Make a more efficient and effective organization able to meet the needs of a dynamic, growing industry and to ensure the safety of the traveling public.

POWERS OF THE ADMINISTRATOR AND FAA (SECS. 103, 105, 106, 108 AND 109)

In response to concerns about excessive DOT interference in the affairs of the FAA, the FAA is given significant autonomy and independence, which GA has specifically sought during the FAA reform debate.

REGULATORY REFORMS (SEC. 104)

The FAA's regulatory and rulemaking function is reformed and streamlined to address concerns about overregulation of the aviation community, including general aviation.

ADMINISTRATOR'S CONTROL OVER FAA PERSONNEL (SEC. 105)

The FAA is given the power to hire, fire, and compensate like a business in order to make the agency more efficient and effective.

PERSONNEL AND PROCUREMENT REFORMS (SECS. 201 - 203)

Major reform of the FAA's personnel and procurement systems will streamline the agency and speed up much needed modernization of the air traffic control (ATC) system.

INDEPENDENT STUDIES ON FAA COSTS AND NEEDS (SEC. 305(A)(5))

In response to stated concerns as to whether the FAA really needs new fees, the bill now requires the Administrator to ensure that within 6 months after enactment, independent studies are done assessing the FAA's costs of services provided to each aviation industry segment, and reviewing the funding needs and assumptions for FAA operations, capital spending, and airport infrastructure. The studies must be prepared by individuals having no direct financial interest in the studies' results. In addition, no new fees developed pursuant to this bill could be imposed until, at the earliest, 6 months after the studies are completed.

FUNDING REFORM (SECS. 303-305)

Funding reform in the nature of user fees should enable FAA to provide General Aviation with the current level of services which may otherwise be drastically cut because of constraints imposed by the budget balanced budget resolution. Unlike the current funding process, the funding system designed under S. 1239 would actually get aviation revenues directly to the FAA for aviation purposes—such monies could no longer be used to mask the federal budget deficit as happened with the Aviation Trust Fund.

ATC USER FEES (SEC. 304)

GA is explicitly exempt from the new ATC user fees. In addition, certain business aircraft also are exempt (i.e., rotorcraft or piston engine aircraft not used exclusively in air carrier service).

OTHER FEES FOR FAA SERVICES (SEC. 303)

No section 303 fees could be imposed until 6 months after the FAA costs and needs studies are completed, and no earlier than 1 year after enactment. The new fees imposed pursuant to this section could only be for training, licensing, regulatory proceedings, and activities directly necessary for certification.

AVIATION TRUST FUND SPENDING (SEC. 306)

The current limits on the way money can be spent out of the Aviation Trust Fund are changed. Currently, only 50 percent of FAA's Operations budget come from the Trust Fund—the bill

would change the limit to 80 percent. This significant change greatly facilitates spending down of the \$5 billion “surplus” in the Trust Fund, which the General Aviation community has strongly advocated.

THREE-YEAR APPROPRIATIONS AND AUTHORIZATION CYCLE (SEC. 307)

Giving the FAA a three-year appropriations and authorization cycle (rather than the current one-year) would provide tremendous budget stability for the FAA so that it can plan for more than one year at time.

SENSE OF THE SENATE ON SPENDING DOWN THE TRUST FUND SURPLUS (SEC. 308)

The Sense of the Senate provision urges Congress to make every effort to spend down the Aviation Trust Fund as the General Aviation community has been advocating.

MAC MEMBERSHIP (SEC. 112)

GA could be represented on the Management Advisory Council (MAC), which performs important oversight and advisory functions on management, policy, spending, and regulatory matters under the FAA’s jurisdiction.

SUMMARY OF BENEFITS

General Aviation will benefit considerably from this bill because of the streamlined procurement and personnel systems, and its specific exemption from new ATC user fees imposed pursuant to section 304.

GA also would have the opportunity to be represented on the MAC. As a result, GA would participate in the development of any other fees (particularly those under section 303) that could be imposed only after FAA needs and costs studies are completed. In addition, the bill does not preclude a continuing General Fund contribution for the FAA.

Finally, the governance provisions in S. 1239 would ensure that GA could maintain open lines of communication and positive relationships with the Congress, the Secretary of Transportation, and the FAA Administrator on all matters relating to aviation.

SUMMARY OF BENEFITS FOR COMMERCIAL AIR CARRIERS

TITLE

The title of the bill, the “Air Traffic Management System Performance Act,” reflects a recognition of the need to improve air traffic management, which is critical to carriers as they are concerned about the delays caused by current ATC system undercapacity.

RELEVANT FINDINGS (SEC. 101)

Congress must keep its commitment to users of the national air transportation system to spend down the trust fund, including the surplus.

The FAA must continue to recognize who its customers are and what their needs are. This helps to correct the existing “disconnect” between the ATC system users and operators (i.e., the FAA).

For those industry segments that are exempt from any of the new fees, the Congress should appropriate funds to cover such segments’ costs for the FAA and ATC services they use. This helps alleviate the carriers’ concerns about cross-subsidization.

Before any new charges or fees are imposed on any industry segment, an independent review assessing the FAA’s funding needs must be performed.

Before any new charges or fees are imposed, an independent study of the costs to the FAA for each aviation segment’s use of safety, operational, and ATC services must be performed.

All reforms should be designed to help the FAA become more responsive to the needs of its customers. This also helps to correct the “disconnect” between the FAA and its customers.

RELEVANT PURPOSES (SEC. 102)

Permit the FAA, with Congressional review, to establish a program to improve ATC system performance, and establish appropriate levels of cost accountability for ATC services provided by the FAA.

Permit the FAA, with Congressional review, to establish a new program of incentive-based fees for FAA and ATC services to improve air traffic management system performance and to establish appropriate levels of cost accountability for services provided by the FAA.

CREATE A MORE AUTONOMOUS AND ACCOUNTABLE FAA

Make the FAA a more efficient and effective organization able to meet the needs of a dynamic, growing industry and to ensure the safety of the traveling public.

REGULATORY REFORM (SEC. 104)

The FAA must act within a certain period of time on all petitions for rulemaking, NPRMs, and ANPRMs. In addition, the MAC (which would have several air carrier representatives) could perform periodic review of regulations, and could review and make recommendations on the FAA’s rulemaking cost-benefit analysis and its advisory circular and service bulletin procedures. Finally, the threshold for DOT review of proposed or final regulations was lowered to \$50 million, from \$100 million, at the request of the air carriers.

MAC MEMBERSHIP (SEC. 112)

The Management Advisory Council (MAC), which performs important oversight and advisory functions on management, policy, spending, and regulatory matters under the FAA’s jurisdiction, was originally inserted in the bill at the request of the carriers. The MAC would review and make recommendations on the FAA’s rulemaking and cost-benefit analysis and its advisory circular and service bulletin procedures. The MAC would also have access to the FAA’s cost data associated with ATC system acquisitions and oper-

ations, and would assist with the development of the new fee systems established by the bill.

The 15-member MAC would include designees of the DOT and DoD Secretaries (1 each), and 13 others representing various aviation interests who are appointed by the President with the advise of the Senate. Significantly, 6 members of the MAC must represent air carriers' interests; of those 6, there must be 1 representative of small commercial carriers (i.e., regionals), 1 representative of cargo carriers, and 2 representatives of small commercial carriers with annual revenues of \$4 billion or less. In addition, no FAA employees could be directly represented on the MAC.

INDEPENDENT STUDIES ON FAA COSTS AND NEEDS (SEC. 305(A)(5))

In response to stated concerns about the need for new fees, the bill now requires the Administrator to ensure that within 6 months after enactment, independent studies are done assessing the FAA's costs of services provided to each aviation industry segment, and reviewing the funding needs and assumptions for FAA operations, capital spending, and airport infrastructure. The studies must be prepared by individuals having no direct financial interest in the studies' results. In addition, no new fees developed pursuant to this bill could be imposed until, at the earliest, 6 months after the studies are completed. It is important to note that the commercial air carriers proposed such independent studies during recent hearings in the Senate Aviation Subcommittee on FAA reform.

FEES FOR NON-ATC FAA SERVICES (SEC. 303)

No section 303 fees could be imposed until 6 months after the FAA costs and needs studies are completed, and no earlier than 1 year after enactment. The new fees imposed pursuant to this section could only be for training, licensing, regulatory proceedings, and activities directly necessary for certification.

ATC USER FEES (SEC. 304)

The bill contemplates conversion to an almost entirely user-supported FAA by 2003, and envisions that the new ATC fee system will replace the current excise tax system. To ensure that no cross-subsidization by the carriers takes place, the bill notes that if Congress determines that certain industry segments ultimately will not be required to cover the costs of the FAA/ATC services they receive, Congress should appropriate the funds to cover that deficiency. In addition, the bill does not preclude a continuing General Fund contribution for the FAA.

The new ATC fee system, which would be developed with the assistance of outside experts and carrier representatives on the MAC, would not be subject to a cap on the total amount of new ATC fees that could be imposed. Many carriers believed that a cap, which was included in the original bill, would give the FAA the ability and opportunity to immediately increase fees over current excise tax levels. When developing this new ATC fee system, the Administrator must consider the impact on airfares (including low-fare, high frequency service) and competition (including inter-island Hawaiian air service), the impact on service to small communities and

service provided by regional carriers, and several alternative methods for calculating fees.

To ensure that there is additional, critical review of the new ATC fee system, Congress has 45 days to disapprove of the proposed system after it is submitted to Congress. In addition, if the 45-day review period has expired and Congress did not reject the new system, but the trust fund taxes are still in effect, the new ATC fees would not be imposed on those aviation industry segments still paying trust fund taxes until those taxes terminate. This ensures that no aviation industry segment pays both trust fund taxes and fees imposed under the new ATC fee system. It is particularly important for commercial air carriers that they are not subject to the trust fund taxes and the new fees simultaneously as they are currently the largest contributor to the trust fund. Finally, as with section 303 fees, no section 304 fees could be imposed until 6 months after the FAA costs and needs studies are completed, and no earlier than 1 year after enactment.

AVIATION TRUST FUND (SECS. 307–308)

The spending caps under the trust fund would be increased for FY'98 and FY'99 to facilitate spending down the trust fund. Moreover, additional "Findings" language and a new "Sense of the Senate" section also make clear that the unobligated surplus in the trust fund must be spent down.

NEW DEDICATED FAA ACCOUNT

The bill creates a separate, dedicated Treasury account for all new fees collected by the FAA. To ensure that all of the funds going into this account are spent, the receipts and disbursements of this account would be off-setting collections and, therefore, not scored in the budget process. Moreover, the funds in the account would be available only to the Administrator, which means they would not be subject to the appropriations process or sequestrations.

COSTS INCURRED IN COLLECTING AND HANDLING FEES (SEC. 305(A)(6))

This provision requires the FAA to prescribe regulations to ensure that air carriers that collect new fees from third parties may collect an additional amount reflecting the costs incurred in collecting and handling the fees.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49. TRANSPORTATION

Subtitle I. Department of Transportation

CHAPTER 1. ORGANIZATION

§ 106. Federal Aviation Administration

(a) The Federal Aviation Administration is an administration in the Department of Transportation.

(b) The head of the Administration is the Administrator. The Administration has a Deputy Administrator. They are appointed by the President, by and with the advice and consent of the Senate. When making an appointment, the President shall consider the fitness of the individual to carry out efficiently the duties and powers of the office. **[The Administrator]** *Except as provided in subsection (f) of this section or in other provisions of law, the Administrator* reports directly to the Secretary of Transportation. The term of office for any individual appointed as Administrator after the date of the enactment of this sentence shall be 5 years.

(c) The Administrator must—

- (1) be a citizen of the United States;
- (2) be a civilian; and
- (3) have experience in a field directly related to aviation.

(d)(1) The Deputy Administrator must be a citizen of the United States and have experience in a field directly related to aviation. An officer on active duty in an armed force may be appointed as Deputy Administrator. However, if the Administrator is a former regular officer of an armed force, the Deputy Administrator may not be an officer on active duty in an armed force, a retired regular officer of an armed force, or a former regular officer of an armed force.

(2) An officer on active duty or a retired officer serving as Deputy Administrator is entitled to hold a rank and grade not lower than that held when appointed as Deputy Administrator. The Deputy Administrator may elect to receive (A) the pay provided by law for the Deputy Administrator, or (B) the pay and allowances or the retired pay of the military grade held. If the Deputy Administrator elects to receive the military pay and allowances or retired pay, the

Administration shall reimburse the appropriate military department from funds available for the expenses of the Administration.

(3) The appointment and service of a member of the armed forces as a Deputy Administrator does not affect the status, office, rank, or grade held by that member, or a right or benefit arising from the status, office, rank, or grade. The Secretary of a military department does not control the member when the member is carrying out duties and powers of the Deputy Administrator.

(e) The Administrator and the Deputy Administrator may not have a pecuniary interest in, or own stock in or bonds of, an aeronautical enterprise, or engage in another business, vocation, or employment.

[(f) The Secretary of Transportation shall carry out the duties and powers, and controls the personnel and activities, of the Administration. The Secretary may not submit decisions for the approval of, nor be bound by the decisions or recommendations of, a committee, board, or organization established by executive order.]

(f) *AUTHORITY OF THE SECRETARY AND THE ADMINISTRATOR.*—

(1) *AUTHORITY OF THE SECRETARY.*—*Except as provided in paragraph (2), the Secretary of Transportation shall carry out the duties and powers of the Administration.*

(2) *AUTHORITY OF THE ADMINISTRATOR.*—*The Administrator—*

(A) is the final authority for carrying out all functions, powers, and duties of the Administration relating to—

(i) the appointment and employment of all officers and employees of the Administration (other than Presidential and political appointees);

(ii) the acquisition, operation, and maintenance of property and equipment of the Administration;

(iii) except as otherwise provided in paragraph (3), the promulgation of regulations, rules, orders, circulars, bulletins, and other official publications of the Administration; and

(iv) any obligation imposed on the Administrator, or power conferred on the Administrator, by the Air Traffic Management System Performance Improvement Act of 1996 (or any amendment made by that Act);

(B) shall offer advice and counsel to the President with respect to the appointment and qualifications of any officer or employee of the Administration to be appointed by the President or as a political appointee;

(C) may delegate, and authorize successive redelegations of, to an officer or employee of the Administration any function, power, or duty conferred upon the Administrator, unless such delegation is prohibited by law; and

(D) except as otherwise provided for in this title, and notwithstanding any other provision of law to the contrary, shall not be required to coordinate, submit for approval or concurrence, or seek the advice or views of the Secretary or any other officer or employee of the Department of Transportation on any matter with respect to which the Administrator is the final authority.

(3) *REGULATIONS.*—

(A) *IN GENERAL.*—In the performance of the functions of the Administrator and the Administration, the Administrator is authorized to issue, rescind, and revise such regulations as are necessary to carry out those functions. The issuance of such regulations shall be governed by the provisions of chapter 5 of title 5. The Administrator shall act upon all petitions for rulemaking no later than 6 months after the date such petitions are filed by dismissing such petitions, by informing the petitioner of an intention to dismiss, or by issuing a notice of proposed rulemaking or advanced notice of proposed rulemaking. The Administrator shall issue a final regulation, or take other final action, not later than 18 months after the date of publication in the Federal Register of a notice of proposed rulemaking or, in the case of an advanced notice of proposed rulemaking, if issued, not later than 24 months after that date.

(B) *APPROVAL OF SECRETARY OF TRANSPORTATION.*—(i) The Administrator may not issue a proposed regulation or final regulation that is likely to result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$50,000,000 or more (adjusted annually for inflation beginning with the year following the date of enactment of this Act) in any 1 year, or any regulation which is significant, unless the Secretary of Transportation approves the issuance of the regulation in advance. For purposes of this paragraph, a regulation is significant if it is likely to—

(I) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(II) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(III) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(IV) raise novel legal or policy issues arising out of legal mandates.

(ii) In an emergency, the Administrator may issue a regulation described in clause (i) without prior approval by the Secretary, but any such emergency regulation is subject to ratification by the Secretary after it is issued and shall be rescinded by the Administrator within 5 days (excluding Saturdays, Sundays, and legal public holidays) after issuance if the Secretary fails to ratify its issuance.

(iii) Any regulation that does not meet the criteria of clause (i), and any regulation or other action that is a routine or frequent action or a procedural action, may be issued by the Administrator without review or approval by the Secretary.

(iv) The Administrator shall submit a copy of any regulation requiring approval by the Secretary under clause (i) to

the Secretary, who shall either approve it or return it to the Administrator with comments within 45 days after receiving it.

(C) PERIODIC REVIEW.—(i) Beginning on the date which is 3 years after the date of enactment of the Air Traffic Management System Performance Act of 1996, the Administrator shall review any unusually burdensome regulation issued by the Administrator after the date of enactment of the Air Traffic Management System Performance Act of 1996 beginning not later than 3 years after the effective date of the regulation to determine if the cost assumptions were accurate, the benefit of the regulations, and the need to continue such regulations in force in their present form.

(ii) The Administrator may identify for review under the criteria set forth in clause (i) unusually burdensome regulations that were issued before the date of enactment of the Air Traffic Management System Performance Act of 1996 and that have been in force for more than 3 years.

(iii) For purposes of this subparagraph, the term “unusually burdensome regulation” means any regulation that results in the annual expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$25,000,000 or more (adjusted annually for inflation beginning with the year following the date of enactment of the Air Traffic Management System Performance Act of 1996) in any year.

(iv) The periodic review of regulations may be performed by advisory committees and the Management Advisory Council established under subsection (p).

(4) DEFINITION OF POLITICAL APPOINTEE.—For purposes of this subsection, the term “political appointee” means any individual who—

(A) is employed in a position on the Executive Schedule under sections 5312 through 5316 of title 5;

(B) is a limited term appointee, limited emergency appointee, or noncareer appointee in the Senior Executive Service as defined under section 3132(a) (5), (6), and (7) of title 5, respectively; or

(C) is employed in a position in the executive branch of the Government of a confidential or policy-determining character under Schedule C of subpart C of part 213 of title 5 of the Code of Federal Regulations.

(g) DUTIES AND POWERS OF ADMINISTRATOR.—

(1) Except as provided in paragraph (2) of this subsection, the Administrator shall carry out—

(A) duties and powers of the Secretary of Transportation under subsection (f) of this section related to aviation safety (except those related to transportation, packaging, marking, or description of hazardous material) and stated in sections 308(b), 1132(c) and (d), 40101(c), 40103(b), 40106(a), 40108, 40109(b), 40113(a), (c), and (d), 40114(a), 40119, 44501(a) and (c), 44502(a)(1), (b), and (c), 44504, 44505, 44507, 44508, 44511-44513, 44701-44716, 44718(c), 44721(a), 44901, 44902, 44903(a)-(c) and (e), 44906, 44912,

44935-44937, and 44938(a) and (b), chapter 451 [49 U.S.C. 45101 et seq.], sections 45302, 45303, 46104, 46301(d) and (h)(2), 46303(c), 46304-46308, 46310, 46311, and 46313-46316, chapter 465 [49 U.S.C. 46501 et seq.], and sections 47504(b) (related to flight procedures), 47508(a), and 48107 of this title; and

(B) additional duties and powers prescribed by the Secretary of Transportation.

(2) In carrying out sections 40119, 44901, 44903(a)-(c) and (e), 44906, 44912, 44935-44937, 44938(a) and (b), and 48107 of this title, paragraph (1)(A) of this subsection does not apply to duties and powers vested in the Director of Intelligence and Security by section 44931 of this title.

(h) Section 40101(d) of this title applies to duties and powers specified in subsection (g)(1) of this section. Any of those duties and powers may be transferred to another part of the Department only when specifically provided by law or a reorganization plan submitted under chapter 9 of title 5 [5 U.S.C. 901 et seq.]. A decision of the Administrator in carrying out those duties or powers is administratively final.

(i) The Deputy Administrator shall carry out duties and powers prescribed by the Administrator. The Deputy Administrator acts for the Administrator when the Administrator is absent or unable to serve, or when the office of the Administrator is vacant.

(j) There is established within the Federal Aviation Administration an institute to conduct civil aeromedical research under section 44507 of this title. Such institute shall be known as the "Civil Aeromedical Institute". Research conducted by the institute should take appropriate advantage of capabilities of other government agencies, universities, or the private sector.

(k) AUTHORIZATION OF APPROPRIATIONS FOR OPERATIONS.—There is authorized to be appropriated to the Secretary of Transportation for operations of the Administration \$4,088,000,000 for fiscal year 1991, \$4,412,600,000 for fiscal year 1992, \$4,716,500,000 for fiscal year 1993, \$4,576,000,000 for fiscal year 1994, \$4,674,000,000 for fiscal year 1995, and \$4,810,000,000 for fiscal year 1996.

(l) PERSONNEL AND SERVICES.—

(1) OFFICERS AND EMPLOYEES.—*Upon development of a personnel management system under section 40122(c), the Administrator is authorized, in the performance of the functions of the Administrator, to appoint, transfer, and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out the functions of the Administrator and the Administration. Except as otherwise provided by law, such officers and employees shall be appointed in accordance with the civil service laws and compensated in accordance with title 5. In fixing compensation and benefits of officers and employees, the Administrator shall not engage in any type of bargaining, except to the extent provided for in section 40122(c), nor shall the Administrator be bound by any requirement to establish such compensation or benefits at particular levels.*

(2) EXPERTS AND CONSULTANTS.—*The Administrator is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5.*

(3) *TRANSPORTATION AND PER DIEM EXPENSES.*—The Administrator is authorized to pay transportation expenses, and per diem in lieu of subsistence expenses, in accordance with chapter 57 of title 5.

(4) *USE OF PERSONNEL FROM OTHER AGENCIES.*—The Administrator is authorized to utilize the services of personnel of any other Federal agency (as such term is defined under section 551(1) of title 5).

(5) *VOLUNTARY SERVICES.*—

(A) *IN GENERAL.*—(i) In exercising the authority to accept gifts and voluntary services under section 326 of this title, and without regard to section 1342 of title 31, the Administrator may not accept voluntary and uncompensated services if such services are used to displace Federal employees employed on a full-time, part-time, or seasonal basis.

(ii) The Administrator is authorized to provide for incidental expenses, including transportation, lodging, and subsistence for volunteers who provide voluntary services under this subsection.

(iii) An individual who provides voluntary services under this subsection shall not be considered a Federal employee for any purpose other than for purposes of chapter 81 of title 5, relating to compensation for work injuries, and chapter 171 of title 28, relating to tort claims.

(6) *CONTRACTS.*—The Administrator is authorized to enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary to carry out the functions of the Administrator and the Administration. The Administrator may enter into such contracts, leases, cooperative agreements, and other transactions with any Federal agency (as such term is defined in section 551(1) of title 5) or any instrumentality of the United States, any State, territory, or possession, or political subdivision thereof, any other governmental entity, or any person, firm, association, corporation, or educational institution, on such terms and conditions as the Administrator may consider appropriate.

(m) *COOPERATION BY ADMINISTRATOR.*—With the consent of appropriate officials, the Administrator may, with or without reimbursement, use or accept the services, equipment, personnel, and facilities of any other Federal agency (as such term is defined in section 551(1) of title 5) and any other public or private entity. The Administrator may also cooperate with appropriate officials of other public and private agencies and instrumentalities concerning the use of services, equipment, personnel, and facilities. The head of each Federal agency shall cooperate with the Administrator in making the services, equipment, personnel, and facilities of the Federal agency available to the Administrator. The head of a Federal agency is authorized, notwithstanding any other provision of law, to transfer to or to receive from the Administration, without reimbursement, supplies and equipment other than administrative supplies or equipment.

(n) *ACQUISITION.*—

(1) *IN GENERAL.*—The Administrator is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain—

(i) air traffic control facilities and equipment;

(ii) research and testing sites and facilities; and

(iii) such other real and personal property (including office space and patents), or any interest therein, within and outside the continental United States as the Administrator considers necessary;

(B) to lease to others such real and personal property; and

(C) to provide by contract or otherwise for eating facilities and other necessary facilities for the welfare of employees of the Administration at the installations of the Administration, and to acquire, operate, and maintain equipment for these facilities.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(o) TRANSFERS OF FUNDS.—The Administrator is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred by this Act to the Administrator or functions transferred pursuant to law to the Administrator on or after the date of the enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(p) MANAGEMENT ADVISORY COUNCIL.—

(1) ESTABLISHMENT.—Within 3 months after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall establish an advisory council which shall be known as the Federal Aviation Management Advisory Council (in this subsection referred to as the “Council”). With respect to Federal Aviation Administration management, policy, spending, user fees, and regulatory matters affecting the aviation industry, the Council may submit comments, recommended modifications, and dissenting views to the Administrator. The Administrator shall include in any submission to Congress, the Secretary, or the general public, and in any submission for publication in the Federal Register, a description of the comments, recommended modifications, and dissenting views received from the Council, together with the reasons for any differences between the views of the Council and the views or actions of the Administrator.

(2) MEMBERSHIP.—The Council shall consist of 15 members, who shall consist of—

(A) a designee of the Secretary of Transportation;

(B) a designee of the Secretary of Defense; and

(C) 13 members appointed by the President by and with the advice and consent of the Senate, representing aviation interests, at least 6 of whom shall represent the interests of the air carrier industry (of which at least 2 of whom shall represent major air carriers with gross revenues under \$4,000,000,000, at least 1 of whom shall represent the in-

terests of cargo carriers, and at least 1 of whom shall represent the interests of regional air carriers).

(3) *QUALIFICATIONS.*—No member appointed under paragraph (2)(C) may serve as an officer or employee of the United States Government while serving as a member of the Council.

(4) *FUNCTIONS.*—

(A) *IN GENERAL.*—(i) The Council shall provide advice and counsel to the Administrator on issues which affect or are affected by the operations of the Administrator. The Council shall function as an oversight resource for management, policy, spending, and regulatory matters under the jurisdiction of the Administration.

(ii) The Council shall review the rulemaking cost-benefit analysis process and develop recommendations to improve the analysis and ensure that the public interest is fully protected.

(iii) The Council shall review the process through which the Administration determines to use advisory circulars and service bulletins.

(B) *PANELS AND WORKING GROUPS.*—The chairman of the Council shall establish a panel or working group, from among the members of the Council, on the development of all fees under sections 45301 and 45302, and may establish such additional panels and working groups, consisting of members of the Council, as may be necessary to carry out the functions of the Council.

(C) *MEETINGS.*—The Council shall meet on a regular and periodic basis or at the call of the chairman or of the Administrator.

(D) *ACCESS TO DOCUMENTS AND STAFF.*—The Administration may give the Council appropriate access to relevant documents and personnel of the Administration, and the Administrator shall make available, consistent with the authority to withhold commercial and other proprietary information under section 552 of title 5 (commonly known as the “Freedom of Information Act”), cost data associated with the acquisition and operation of air traffic service systems. Any member of the Council who receives commercial or other proprietary data from the Administrator shall be subject to the provisions of section 1905 of title 18, pertaining to unauthorized disclosure of such information.

(5) *FEDERAL ADVISORY COMMITTEE ACT NOT TO APPLY.*—The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council.

(6) *ADMINISTRATIVE MATTERS.*—

(A) *TERMS OF MEMBERS.*—(i) Except as provided in subparagraph (B), members of the Council appointed by the President under paragraph (2)(C) shall be appointed for a term of 3 years.

(ii) Of the members first appointed by the President—

(I) 4 shall be appointed for terms of 1 year;

(II) 5 shall be appointed for terms of 2 years; and

(III) 4 shall be appointed for terms of 3 years.

(iii) An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(iv) A member whose term expires shall continue to serve until the date on which the member's successor takes office.

(B) CHAIRMAN; VICE CHAIRMAN.—The Council shall elect a chair and a vice chair from among the members appointed under paragraph (2)(C), each of whom shall serve for a term of 1 year. The vice chair shall perform the duties of the chairman in the absence of the chairman.

(C) TRAVEL AND PER DIEM.—Each member of the Council shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his or her usual place of residence, in accordance with section 5703 of title 5.

(D) DETAIL OF PERSONNEL FROM THE ADMINISTRATION.—The Administrator shall make available to the Council such staff, information, and administrative services and assistance as may reasonably be required to enable the Council to carry out its responsibilities under this subsection.

Subtitle VII. Aviation Programs

PART A. AIR COMMERCE AND SAFETY

Subpart I. General

CHAPTER 401. GENERAL PROVISIONS

§40120. Innovative program for air traffic control modernization

(a) INNOVATIVE PROGRAM.—The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the "Administrator") shall develop and implement an innovative program under which an acquisition management system is used to procure goods and services by the Federal Aviation Administration (hereafter in this section referred to as the "Administration").

(b) EXEMPTION FROM PROCUREMENT LAWS.—

(1) IN GENERAL.—Subject to paragraph (2), in carrying out the acquisition management system used under the innovative program, the Administrator may waive all or any part of—

(A) section 3709 of the Revised Statutes (41 U.S.C. 5);

(B) title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 through 266);

(C) the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.);

(D) sections 8, 9, and 15 of the Small Business Act (15 U.S.C. 637, 638, and 644), but the Administrator shall provide resources for the development and implementation of a program that presents the maximum opportunities, to the extent possible, for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts awarded by the Administration;

(E) any provision of law that, pursuant to section 34 of the Office of Federal Procurement Policy Act (41 U.S.C. 430), is listed in the Federal Acquisition Regulation as being inapplicable—

(i) to contracts for the procurement of commercial items; or

(ii) in the case of a subcontract under the innovative program, to subcontracts for the procurement of commercial items;

(F) the Federal Acquisition Streamlining Act of 1994 (Public Law 103-355);

(G) subchapter V of chapter 35 of title 31, United States Code, relating to the procurement protest system;

(H) the Brooks Automatic Data Processing Act (section 111 of the Federal Property and Administrative Services Act of 1949; 40 U.S.C. 759);

(I) the Federal Acquisition Regulation and any law that is not listed in subparagraphs (A) through (G) providing authority to promulgate regulations in the Federal Acquisition Regulation.

(2) EXEMPTIONS FOR THE DEPARTMENT OF DEFENSE.—The Department of Defense shall have the same exemptions from acquisition laws as are waived by the Administrator under paragraph (1) when engaged in joint actions to improve or replenish the national air traffic control system. The Administration may acquire real property, goods, and services through the Department of Defense, or other appropriate agencies, but is bound by the acquisition laws and regulations governing those cases.

(3) EFFECTIVE DATE.—The Administrator may not waive the laws referred to in paragraph (1) until the expiration of the 30-day period referred to in subsection (d)(2).

(c) DEVELOPMENT OF ACQUISITION MANAGEMENT SYSTEM.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator, in consultation with such governmental and nongovernmental experts in acquisition management systems as the Administrator may employ, shall develop an acquisition management system for the Administration. Notwithstanding any other provision of law to the contrary, the Administrator may, for purposes of this section, retain such experts under a contract awarded on a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority. In developing the system, the Administrator may utilize the services of experts and consultants under section 3109 of title 5, without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

(2) REQUIREMENTS.—The acquisition management system to be developed by the Administrator under paragraph (1) shall be—

(A) designed to ensure that new equipment is installed and certified as quickly as possible without sacrificing safe-

ty, principles of fairness, and protection against waste, fraud, and abuse;

(B) designed to ensure the best practicable acquisitions in terms of best value; and

(C) designed to ensure that services are acquired in the most effective and efficient manner.

(d) NOTICE TO CONGRESS.—

(1) IN GENERAL.—Upon completion of the development of the acquisition management system, the Administrator shall submit a comprehensive plan describing the acquisition management system to the Congress. The Administrator shall also transmit with the plan a copy of all suggestions and comments provided to the Administration by the Department of Transportation, and by outside experts (if any), on the acquisition management system.

(2) DATE OF IMPLEMENTATION.—The Administrator may begin to implement the acquisition management system only after the expiration of the 30-day period that begins on the date on which the plan is submitted to the Congress under paragraph (1).

(e) EXPERT EVALUATION.—On the date which is 3 years after the acquisition management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. The Administrator shall transmit a copy of the evaluation to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

(f) MODIFICATIONS TO SYSTEM.—The Administrator may periodically make modifications to the acquisition management system. Any such modifications shall be submitted to the Congress under subsection (d) in the same manner as the acquisition management system plan and may not be implemented until after the expiration of the 30-day period beginning on the date of submission.

§ 40121. Air traffic control modernization reviews

(a) REQUIRED TERMINATIONS OF ACQUISITIONS.—The Administrator of the Federal Aviation Administration (hereafter referred to in this section as the “Administrator”) shall terminate any program initiated after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 and funded under the Facilities and Equipment account that—

(1) is more than 50 percent over the cost goal established for the program;

(2) fails to achieve at least 50 percent of the performance goals established for the program; or

(3) is more than 50 percent behind schedule as determined in accordance with the schedule goal established for the program.

(b) AUTHORIZED TERMINATIONS OF ACQUISITIONS.—The Administrator shall consider terminating, under the authority of subsection (a), any substantial acquisition that—

(1) is more than 10 percent over the cost goal established for the program;

(2) fails to achieve at least 90 percent of the performance goals established for the program; or

(3) is more than 10 percent behind schedule as determined in accordance with the schedule goal established for the program.

(c) *EXCEPTION AND REPORT.*—

(1) *CONTINUANCE OF PROGRAM, ETC.*—Notwithstanding subsection (a), the Administrator may continue an acquisitions program required to be terminated under subsection (a) if the Administrator determines that termination would be inconsistent with the development or operation of the national air transportation system in a safe and efficient manner.

(2) *REPORT.*—If the Administrator makes a determination under paragraph (1), the Administrator shall transmit a copy of the determination, together with a statement of the basis for the determination, to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives.

§ 40122. Innovative program for Federal Aviation Administration services

(a) *INNOVATIVE PROGRAM.*—The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the “Administrator”) shall develop and implement an innovative program under which a personnel management system is used for the management, compensation, and advancement of Federal Aviation Administration (hereafter in this section referred to as the “Administration”) employees.

(b) *EXEMPTION FROM CERTAIN PROVISIONS OF TITLE 5.*—

(1) *IN GENERAL.*—Except as otherwise provided in this section, under the innovative program, the Administration shall be exempt from parts II and III of title 5.

(2) *EFFECTIVE DATE.*—The exemption provided by paragraph (1) shall not take effect until the expiration of the 30-day period specified in subsection (d)(2).

(c) *DEVELOPMENT OF PERSONNEL MANAGEMENT SYSTEM.*—

(1) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall develop a personnel management system for the Administration. Notwithstanding any other provision of law to the contrary, the Administrator may, for purposes of this section, retain such experts under a contract awarded on a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority. In developing the system, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title. In developing the system, the Administrator shall ensure that it responds to the needs of and is consistent with the innovative acquisition management system developed pursuant to section 40120.

(2) *GOAL.*—The goal of the personnel management system to be developed by the Administrator under this section is to provide, consistent with the requirements of this section, the Administration with the ability—

(A) to hire, promote, and fire employees as in the private sector;

(B) to establish a pay structure as needed to conduct the business of the Administration in an efficient and effective manner within available resources;

(C) to provide salaries designed to attract the best qualified employees within available resources;

(D) to staff facilities that are difficult to staff;

(E) to move personnel to those facilities where they are most needed; and

(F) to continue to provide an appropriate framework for labor-management relations concerning terms and conditions of employment.

(3) *CONSULTATION AND NEGOTIATION.*—In developing the personnel management system, the Administrator shall negotiate with the exclusive bargaining representatives of employees of the Administration certified under section 7111 of title 5 and consult with other employees of the Administration. The negotiation with the exclusive bargaining representatives shall be completed on or before the 90th day after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996.

(4) *MEDIATION.*—If the Administrator does not reach an agreement under paragraph (3) with the exclusive bargaining representatives on any provision of the personnel management system, the services of the Federal Mediation and Conciliation Service shall be used to attempt to reach such agreement. If the services of the Federal Mediation and Conciliation Service do not lead to an agreement, the Administrator shall include in the plan to be submitted to Congress under subsection (d) the objections of the exclusive bargaining representatives and the reasons for the objections.

(5) *COST SAVINGS AND PRODUCTIVITY GOALS.*—In negotiating a new personnel system, the Administration and the exclusive bargaining representatives of the employees shall use every reasonable effort to find cost savings and to increase productivity within each of the affected bargaining units.

(6) *ANNUAL BUDGET DISCUSSIONS.*—The Administration and the exclusive bargaining representatives of the employees shall meet annually for the purpose of finding additional cost savings within the Administration's annual budget as it applies to each of the affected bargaining units and throughout the agency.

(d) *NOTICE TO CONGRESS.*—

(1) *IN GENERAL.*—Upon development of the personnel management system under this section, the Administrator shall submit a comprehensive plan describing the personnel management system to the Congress. The Administrator shall also transmit with the plan a copy of all suggestions and comments provided to the Administration by the Department of Transportation,

and by outside experts (if any), on the personnel management system.

(2) *IMPLEMENTATION.*—The Administration may begin to implement the personnel management system only after the expiration of the 30-day period that begins on the date the plan is submitted to the Congress.

(e) *EXPERT EVALUATION.*—On the date which is 3 years after the personnel management system is implemented, the Administration shall employ outside experts to provide an independent evaluation of the effectiveness of the system within 3 months after such date. For this purpose, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary.

(f) *EMPLOYEE RIGHTS AND BENEFITS.*—The enactment of this section shall not result in the exemption of employees of the Administration from any of the following provisions of title 5:

- (1) Section 2302(b) (relating to whistleblower protection).
- (2) Sections 3308–3320 (relating to veterans' preference).
- (3) Section 7116(b)(7) (relating to prohibition of the right to strike).
- (4) Section 7204 (relating to antidiscrimination).
- (5) Chapter 63 (relating to leave).
- (6) Chapter 71 (relating to labor-management relations).
- (7) Chapter 73 (relating to suitability, security, and conduct).
- (8) Chapter 81 (relating to compensation for work injuries).
- (9) Chapter 83 (relating to retirement).
- (10) Chapter 84 (relating to the Federal Employees' Retirement System).
- (11) Chapter 85 (relating to unemployment compensation).
- (12) Chapter 87 (relating to life insurance).
- (13) Chapter 89 (relating to health insurance).
- (14) Subchapter II of chapter 53 (with respect to the pay of the Administrator).

(g) *PAY RESTRICTION.*—No officer or employee of the Administration may receive an annual rate of basic pay in excess of the annual rate of basic pay payable to the Administrator.

(h) *ETHICS.*—The Administration shall be subject to Executive Order 12674 and regulations and opinions promulgated by the Office of Government Ethics, including those set forth in section 2635 of title 5 of the Code of Federal Regulations.

(i) *EMPLOYEE PROTECTIONS.*—Employment rights, wages, and benefits of employees of the Administration shall not be adversely affected by reason of the enactment of this section, except for unacceptable performance or by reason of a reduction in force or reorganization, during the period commencing on the effective date of the Air Traffic Management System Performance Improvement Act of 1996 and ending on the date determined under subsection (d)(2).

(j) *LABOR-MANAGEMENT AGREEMENTS.*—Except as otherwise provided by this title and the Air Traffic Management System Performance Improvement Act of 1996, all labor-management agreements covering employees of the Administration that are in effect on the effective date of the Air Traffic Management System Performance

Improvement Act of 1996 shall remain in effect until their normal expiration date, unless the Administrator and the exclusive bargaining representative agree to the contrary.

(k) MODIFICATIONS TO SYSTEM.—The Administrator may periodically make modifications to the personnel management system. Any such modifications shall be submitted to the Congress under subsection (d) in the same manner as the personnel management system plan and may not be implemented until after the expiration of the 30-day period beginning on the date of submission.

§ [40120.] 40123. Relationship to other laws

Subpart II. Economic Regulation

CHAPTER 417. OPERATIONS OF CARRIERS

Subchapter II. Small Community Air Service

§ 41737. Compensation guidelines, limitations, and claims

(a) COMPENSATION GUIDELINES.—

(1) The Secretary of Transportation shall prescribe guidelines governing the rate of compensation payable under this subchapter [49 U.S.C. 41731 et seq.]. The guidelines shall be used to determine the reasonable amount of compensation required to ensure the continuation of air service or air transportation under this subchapter [49 U.S.C. 41731 et seq.]. The guidelines shall—

(A) provide for a reduction in compensation when an air carrier does not provide service or transportation agreed to be provided;

(B) consider amounts needed by an air carrier to promote public use of the service or transportation for which compensation is being paid; and

(C) include expense elements based on representative costs of air carriers providing scheduled air transportation of passengers, property, and mail on aircraft of the type the Secretary decides is appropriate for providing the service or transportation for which compensation is being provided.

(2) Promotional amounts described in paragraph (1)(B) of this subsection shall be a special, segregated element of the compensation provided to a carrier under this subchapter [49 U.S.C. 41731 et seq.].

(b) REQUIRED FINDING.—The Secretary may pay compensation to an air carrier for providing air service or air transportation under this subchapter [49 U.S.C. 41731 et seq.] only if the Secretary finds the carrier is able to provide the service or transportation in a reliable way.

(c) CLAIMS.—Not later than 15 days after receiving a written claim from an air carrier for compensation under this subchapter [49 U.S.C. 41731 et seq.], the Secretary shall—

(1) pay or deny the United States Government's share of a claim; and

(2) if denying the claim, notify the carrier of the denial and the reasons for the denial.

(d) **AUTHORITY TO MAKE AGREEMENTS AND INCUR OBLIGATIONS.**—

(1) The Secretary may make agreements and incur obligations from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) to pay compensation under this subchapter [49 U.S.C. 41731 et seq.]. An agreement by the Secretary under this subsection is a contractual obligation of the Government to pay the Government's share of the compensation.

(2) Not more than \$38,600,000 is available to the Secretary out of the Fund for each of the fiscal years ending September 30, 1993–1998, to incur obligations under this section. Amounts made available under this section remain available until expended.

(e) *MATCHING FUNDS.*—No earlier than 2 years after the effective date of section 309 of the Air Traffic Management System Performance Improvement Act of 1996, the Secretary may require an eligible agency, as defined in section 40117(a)(2) of this title, to provide matching funds of up to 10 percent for any payments it receives under this subchapter.

Subpart II. Economic Regulation

CHAPTER 417. OPERATIONS OF CARRIERS

Subchapter II. Small Community Air Service

[§ 41742. Ending effective date

[This subchapter [49 U.S.C. 41731 et seq.] is not effective after September 30, 1998.]

§41742. Essential air service authorization

(a) *IN GENERAL.*—Out of the amounts received by the Administration from the fees authorized by sections 45301 through 45303 or otherwise provided to the Administration, the sum of \$50,000,000 is authorized and shall be made available immediately for obligation and expenditure to carry out the essential air service program under this subchapter for each fiscal year.

(b) *FUNDING FOR SMALL COMMUNITY AIR SERVICE.*—Notwithstanding any other provision of law, fees imposed under the authority contained in sections 45301 through 45303, including the authority contained in section 45302(a)(2), shall be used to carry out the essential air service program under this subchapter. Any amounts from those fees that are not obligated or expended at the end of the fiscal year for the purpose of funding the essential air service program under this subchapter shall be made available to the Federal Aviation Administration for use in improving rural air safety under subchapter I of chapter 471 of this title and shall be used exclusively for projects at rural airports under this subchapter.

Subtitle VII. Aviation Programs

PART A. AIR COMMERCE AND SAFETY

Subpart III. Safety

CHAPTER 447. SAFETY REGULATION

§ 44715. Controlling aircraft noise and sonic boom

[(a) STANDARDS AND REGULATIONS.—

[(1) To relieve and protect the public health and welfare from aircraft noise and sonic boom, the Administrator of the Federal Aviation Administration shall prescribe—

[(A) standards to measure aircraft noise and sonic boom; and

[(B) regulations to control and abate aircraft noise and sonic boom.]]

(a) *STANDARDS AND REGULATIONS.—(1) To relieve and protect the public health and welfare from aircraft noise, sonic boom, and aircraft engine emissions, the Administrator of the Federal Aviation Administration, as he deems necessary, shall prescribe—*

(A) standards to measure aircraft noise and sonic boom;

(B) regulations to control and abate aircraft noise and sonic boom; and

(C) emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(2) The Administrator of the Federal Aviation Administration may prescribe standards and regulations under this subsection only after consulting with the Administrator of the Environmental Protection Agency. The standards and regulations shall be applied when issuing, amending, modifying, suspending, or revoking a certificate authorized under this chapter [49 U.S.C. 44701 et seq.].

(3) An original type certificate may be issued under section 44704(a) of this title for an aircraft for which substantial noise abatement can be achieved only after the Administrator of the Federal Aviation Administration prescribes standards and regulations under this section that apply to that aircraft.

(b) *CONSIDERATIONS AND CONSULTATION.—When prescribing a standard or regulation under this section, the Administrator of the Federal Aviation Administration shall—*

(1) consider relevant information related to aircraft noise and sonic boom;

(2) consult with appropriate departments, agencies, and instrumentalities of the United States Government and State and interstate authorities;

(3) consider whether the standard or regulation is consistent with the highest degree of safety in air transportation or air commerce in the public interest;

(4) consider whether the standard or regulation is economically reasonable, technologically practicable, and appropriate for the applicable aircraft, aircraft engine, appliance, or certificate; and

(5) consider the extent to which the standard or regulation will carry out the purposes of this section.

(c) PROPOSED REGULATIONS OF ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY.—The Administrator of the Environmental Protection Agency shall submit to the Administrator of the Federal Aviation Administration proposed regulations to control and abate aircraft noise and sonic boom (including control and abatement through the use of the authority of the Administrator of the Federal Aviation Administration) that the Administrator of the Environmental Protection Agency considers necessary to protect the public health and welfare. The Administrator of the Federal Aviation Administration shall consider those proposed regulations and shall publish them in a notice of proposed regulations not later than 30 days after they are received. Not later than 60 days after publication, the Administrator of the Federal Aviation Administration shall begin a hearing at which interested persons are given an opportunity for oral and written presentations. Not later than 90 days after the hearing is completed and after consulting with the Administrator of the Environmental Protection Agency, the Administrator of the Federal Aviation Administration shall—

(1) prescribe regulations as provided by this section—

(A) substantially the same as the proposed regulations submitted by the Administrator of the Environmental Protection Agency; or

(B) that amend the proposed regulations; or

(2) publish in the Federal Register—

(A) a notice that no regulation is being prescribed in response to the proposed regulations of the Administrator of the Environmental Protection Agency;

(B) a detailed analysis of, and response to, all information the Administrator of the Environmental Protection Agency submitted with the proposed regulations; and

(C) a detailed explanation of why no regulation is being prescribed.

(d) CONSULTATION AND REPORTS.—

(1) If the Administrator of the Environmental Protection Agency believes that the action of the Administrator of the Federal Aviation Administration under subsection (c)(1)(B) or (2) of this section does not protect the public health and welfare from aircraft noise or sonic boom, consistent with the considerations in subsection (b) of this section, the Administrator of the Environmental Protection Agency shall consult with the Administrator of the Federal Aviation Administration and may request a report on the advisability of prescribing the regulation as originally proposed. The request, including a detailed statement of the information on which the request is based, shall be published in the Federal Register.

(2) The Administrator of the Federal Aviation Administration shall report to the Administrator of the Environmental Protection Agency within the time, if any, specified in the re-

quest. However, the time specified must be at least 90 days after the date of the request. The report shall—

(A) be accompanied by a detailed statement of the findings of the Administrator of the Federal Aviation Administration and the reasons for the findings;

(B) identify any statement related to an action under subsection (c) of this section filed under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C));

(C) specify whether and where that statement is available for public inspection; and

(D) be published in the Federal Register unless the request proposes specification by the Administrator of the Federal Aviation Administration and the report indicates that action will be taken.

(e) **SUPPLEMENTAL REPORTS.**—The Administrator of the Environmental Protection Agency may request the Administrator of the Federal Aviation Administration to file a supplemental report if the report under subsection (d) of this section indicates that the proposed regulations under subsection (c) of this section, for which a statement under section 102(2)(C) of the Act (42 U.S.C. 4332(2)(C)) is not required, should not be prescribed. The supplemental report shall be published in the Federal Register within the time the Administrator of the Environmental Protection Agency specifies. However, the time specified must be at least 90 days after the date of the request. The supplemental report shall contain a comparison of the environmental effects, including those that cannot be avoided, of the action of the Administrator of the Federal Aviation Administration and the proposed regulations of the Administrator of the Environmental Protection Agency.

(f) **Exemptions.** An exemption from a standard or regulation prescribed under this section may be granted only if, before granting the exemption, the Administrator of the Federal Aviation Administration consults with the Administrator of the Environmental Protection Agency. However, if the Administrator of the Federal Aviation Administration finds that safety in air transportation or air commerce requires an exemption before the Administrator of the Environmental Protection Agency can be consulted, the exemption may be granted. The Administrator of the Federal Aviation Administration shall consult with the Administrator of the Environmental Protection Agency as soon as practicable after the exemption is granted.

Subtitle VII. Aviation Programs

PART A. AIR COMMERCE AND SAFETY

Subpart III. Safety

CHAPTER 453. FEES

§ 45301. Authority to impose fees

(a) GENERAL AUTHORITY.—The Secretary of Transportation may impose a fee for an approval, test, authorization, certificate, permit, registration, transfer, or rating related to aviation that has not been approved by Congress only when the fee—

[(1) (A) was in effect on January 1, 1973; and

[(B) is not more than the fee in effect on January 1, 1973, adjusted proportion to changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor between January 1, 1973, and the date the fee is imposed; or

[(2) is imposed under section 45302 of this title.

[(b) NONAPPLICATION.—Subsection (a) does not apply to a fee for a test, authorization, certificate, permit, or rating related to an airman or repair station administered or issued outside the United States.

[(c) RECOVERY OF COST OF FOREIGN AVIATION SERVICES.—

[(1) ESTABLISHMENT OF FEES.—The Administrator may establish and collect fees for providing or carrying out the following aviation services outside the United States: any test, authorization, certificate, permit, rating, evaluation, approval, inspection, review.

[(2) FOREIGN REPAIR STATION CERTIFICATION AND INSPECTION FEES.—The Administrator must establish and collect under this subsection fees for certification and inspection of repair stations outside of the United States.

[(3) LEVEL OF FEES.—Fees shall be established under this subsection as necessary to recover the additional cost of providing or carrying out such services outside the United States, as compared to the cost of providing or carrying out such services within the United States; except that the Administrator may for such services as the Administrator designates (and shall for certification and inspection of repair stations outside the United States) establish fees at a level necessary to recover the full cost of providing such services.

[(4) EFFECT ON OTHER AUTHORITY.—The provisions of this subsection do not limit the Administrator's authority to establish and collect fees under subsection (a).

[(5) CREDITING OF PREESTABLISHED FEES.—Fees described in paragraph (1) that were not established before the date of the enactment of this subsection may be credited in accordance with section 45302(d).]

§ 45301. General provisions

(a) IN GENERAL.—The Administrator of the Federal Aviation Administration (hereafter in this section referred to as the "Adminis-

trator”) shall submit to the Congress a performance-based fee system, to the maximum extent possible—

(1) not later than 1 year after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, for services other than air traffic control services, including training, licensing, regulatory proceedings, and activities directly necessary for certification; and

(2) not later than 6 months after such date of enactment, for—

(A) services (other than air traffic control services) provided to a foreign government; and

(B) air traffic control services for flights over the United States or its territories by air carriers that neither arrive at nor depart from an airport in the United States or its territories (other than such flights by foreign government aircraft engaged on official business).

(b) *CONSIDERATIONS.*—

(1) *IN GENERAL.*—To the maximum extent possible, the Administrator, in developing a fee system, shall consider—

(A) the impact on segments of the aviation industry; and

(B) the fair value, or cost, of the service provided by the Federal Aviation Administration (hereafter in this section referred to as the “Administration”).

(2) *ADDITIONAL STANDARDS FOR AIRCRAFT MANUFACTURING CERTIFICATION FEES.*—In the case of aircraft manufacturing certification services, in establishing fees the Administrator shall—

(A) not charge fees for administrative and overhead costs not directly related to service activities;

(B) consider the effect, both domestically and internationally, of fees on each industry sector;

(C) provide a basis for reducing user fees, in appropriate cases, when manufacturers provide in-kind services, such as training, to the Administration;

(D) relate user fees to timeliness of Administration services;

(E) create reasonable incentives for the Administration, and for payors, to reduce the amount of Administration costs required to perform services; and

(F) avoid cross-subsidization among industry sectors.

(c) *CONSULTATION WITH MANAGEMENT ADVISORY COUNCIL.*—In developing proposals under this section, the Administrator shall consult with the Management Advisory Council established under section 106(p) and, to the maximum extent possible, seek to develop a consensus.

(d) *USE OF EXPERTS AND CONSULTANTS.*—In developing the system, the Administrator may consult with such nongovernmental experts as the Administrator may employ and the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary. Notwithstanding any other provision of law to the contrary, the Administrator may retain such experts under a contract awarded on

a basis other than a competitive basis and without regard to any such provisions requiring competitive bidding or precluding sole source contract authority. The Administrator shall cause a copy of the proposed fee system to be printed in the Federal Register upon its submission to the Congress.

(e) *FEES EFFECTIVE 45 DAYS AFTER SUBMISSION.*—

(1) *IN GENERAL.*—Unless disapproved by the Congress under section 45303(c), any fees proposed by the Administrator under this section shall take effect 45 days after the date on which the proposal is submitted to the Congress, or on such later date as the Administrator may propose. If a fee proposal is submitted to the Congress less than 45 days before the date on which the Congress adjourns sine die, or less than 45 days before any 30-day period in which neither House of the Congress is in session, then the fees so proposed shall not take effect unless resubmitted under this section. Any proposal resubmitted shall be considered a new submission for applying the first sentence of this paragraph to the resubmitted proposal.

(2) *IMPLEMENTATION DELAYED IF TRUST FUND AMOUNTS ADEQUATE.*—Beginning with fiscal year 1998, no fee proposed by the Administrator may be imposed under subsection (a)(1) unless, for the preceding fiscal year, the sum of the outlays from the Airport and Airway Trust Fund exceeds the receipts of the Fund derived from Federal taxes, amounts equivalent to the receipts from which are credited to the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (hereafter in this chapter referred to as the “trust fund taxes”).

(3) *AIRCRAFT MANUFACTURING CERTIFICATION FEES NOT IMPLEMENTED BEFORE AIR TRAFFIC CONTROL FEES.*—Notwithstanding any other provision of this Act, the Administrator may not impose a fee under this section for aircraft manufacturing certification services before imposing a fee for air traffic control services under section 45302.

(f) *AGREEMENT WITH DEPARTMENT OF DEFENSE.*—Within 6 months after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administration shall enter into an agreement with the Department of Defense under which the Administration will be reimbursed for the net cost of air traffic control services provided to the Department of Defense.

(g) *TERMINATION.*—Fees imposed under subsection (a)(1) shall terminate 3 years after going into effect, but any amounts collected shall remain available until expended.

(h) *ADDITIONAL SYSTEM PROPOSALS.*—Not later than 6 months before the date on which any fee system imposed under this section terminates, the Administrator shall submit to the Congress a proposal for a fee system to replace the terminating system. Any replacement fee system proposed under this subsection shall be developed in consultation with the Management Advisory Council established under section 106(p) in the same manner as under subsection (c). The Administrator shall submit to the Congress at the same time as the proposal is submitted, a review of the effectiveness of the standards established for the fee system the proposed fee system is intended to replace, conducted by independent experts. The proposed

replacement fee system shall take effect upon the termination of the fee system it replaces unless disapproved by the Congress under section 45303(c), and shall terminate 3 years after going into effect.

(i) CERTAIN FEES PROHIBITED.—The Administration may not impose fees under subsection (a)(1) for the direct cost of accident investigations, or the costs of inspections of or enforcement actions initiated against any segment of the aviation industry.

§ 45302. Fees involving aircraft not providing air transportation

[(a) APPLICATION.—This section applies only to aircraft not used to provide air transportation.

[(b) GENERAL AUTHORITY AND MAXIMUM FEES.—The Administrator of the Federal Aviation Administration may impose fees to pay for the costs of issuing airman certificates to pilots and certificates of registration of aircraft and processing forms for major repairs and alterations of fuel tanks and fuel systems of aircraft. The following fees may not be more than the amounts specified:

[(1) \$12 for issuing an airman's certificate to a pilot.

[(2) \$25 for registering an aircraft after the transfer of ownership.

[(3) \$15 for renewing an aircraft registration.

[(4) \$7.50 for processing a form for a major repair or alteration of a fuel tank or fuel system of an aircraft.

[(c) ADJUSTMENTS.—The Administrator shall adjust the maximum fees established by subsection (b) of this section for changes in the Consumer Price Index of All Urban Consumers published by the Secretary of Labor.

[(d) CREDIT TO ACCOUNT AND AVAILABILITY.—Money collected from fees imposed under this section shall be credited to the account in the Treasury from which the Administrator incurs expenses in carrying out chapter 441 [49 U.S.C. 44101 et seq.] and sections 44701-44716 of this title (except sections 44701(c), 44703(f)(2), and 44713(d)(2)). The money is available to the Administrator to pay expenses for which the fees are collected.

[(e) EFFECTIVE DATE.—A fee may not be imposed under this section before the date on which the regulations prescribed under sections 44111(d), 44703(f)(2), and 44713(d)(2) of this title take effect.]

§ 45302. User fees for air traffic control services

(a) IN GENERAL.—Not later than 1 year after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator of the Federal Aviation Administration (hereafter in this section referred to as the "Administrator") shall submit to the Congress a proposed fee system for air traffic control services. In developing the proposal, the Administrator may utilize the services of experts and consultants under section 3109 of title 5 without regard to the limitation imposed by the last sentence of section 3109(b) of such title, and may contract on a sole source basis, notwithstanding any other provision of law to the contrary, to develop air traffic control user fees based on improved system performance. The Administrator shall cause a copy of the proposed fee system to be printed in the Federal Register upon its submission to the Congress.

(b) *CONSIDERATIONS.*—To the maximum extent feasible, in developing a fee system under this section, the Administrator shall consider—

- (1) the impact on air fares (including low-fare, high-frequency service) and competition;
- (2) the existing contributions provided by individual air carriers toward funding of the Federal Aviation Administration and the air traffic control system (through contributions to the Airport and Airway Trust Fund);
- (3) the continuation of promoting fair and competitive practices;
- (4) the unique circumstances associated with inter island air carrier service in Hawaii;
- (5) the impact on service to small communities;
- (6) the impact on services provided by regional air carriers; and
- (7) several alternative methodologies for calculating fees so as to achieve a fair and reasonable distribution of the costs of service among users.

(c) *LIMITATIONS.*—

(1) *TRUST FUND PAYORS.*—Fees imposed under this section on any segment of the aviation industry (other than on flights operated by air carriers within United States territories or between such territories and foreign countries) subject to Federal taxes, amounts equivalent to the receipts of which are credited to the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (hereafter in this section referred to as “trust fund taxes”) shall take effect on the later of—

(A) the date established under subsection (d) of this section, or

(B) the date immediately following the date on which the trust fund taxes paid by that segment terminate.

(2) *OTHER USERS.*—Notwithstanding paragraph (1), fees imposed under this section may be imposed on any user of air traffic control services not subject to trust fund taxes, so long as any such fees are consistent with international agreements.

(3) *EXEMPTION FOR CERTAIN AIRCRAFT.*—No fee may be imposed under this section on sport and recreation aircraft or on agricultural aircraft.

(d) *FEES EFFECTIVE 45 DAYS AFTER SUBMISSION.*—Unless disapproved by the Congress under section 45303(c), fees proposed by the Administrator under this section take effect 45 days after the date on which the proposal is submitted to the Congress, or on such later date as the Administrator may propose.

(e) *DEFINITIONS.*—For the purposes of this section the following definitions shall apply:

(1) *SEGMENT.*—The term “segment” refers to—

- (A) commercial airlines;
- (B) commercial cargo air carriers;
- (C) business jets;
- (D) general aviation; and
- (E) public use.

(2) *BUSINESS JETS.*—The term “business jets” means turbine engine aircraft other than rotorcraft and aircraft used exclusively in air carrier service.

(3) *SPORT AND RECREATION AIRCRAFT.*—The term “sport and recreation aircraft” means non-powered aircraft, rotorcraft, and reciprocating piston engine aircraft not used to provide air carrier service.

(f) *CONSULTATION WITH MANAGEMENT ADVISORY COUNCIL.*—In developing proposals under subsection (a) of this section, the Administrator shall consult with the Management Advisory Council established under section 106(p) and, to the maximum extent possible, seek to develop a consensus.

(g) *TERMINATION.*—Fees imposed under this section shall terminate 3 years after going into effect, but any amounts collected shall remain available until expended.

(h) *ADDITIONAL SYSTEM PROPOSALS.*—Not later than 6 months before the date on which any fee system imposed under this section terminates, the Administrator shall submit to the Congress a proposal for a fee system to replace the terminating system. Any replacement fee system proposed under this subsection shall be developed in consultation with the Management Advisory Council established under section 106(p) in the same manner as under subsection (f). The Administrator shall submit to the Congress at the same time as the proposal is submitted, a review of the effectiveness of the standards established for the fee system the proposed fee system is intended to replace, conducted by independent experts. The proposed replacement fee system shall take effect upon the termination of the fee system it replaces unless disapproved by the Congress under section 45303(c), and shall terminate 3 years after going into effect.

§ 45303. Administrative provisions

(a) *IN GENERAL.*—

(1) *FEES PAYABLE TO ADMINISTRATOR.*—All fees imposed and amounts collected under this chapter for services performed, or materials furnished, by the Federal Aviation Administration (hereafter in this section referred to as the “Administration”) are payable to the Administrator of the Federal Aviation Administration.

(2) *REFUNDS.*—The Administrator may refund any fee paid by mistake or any amount paid in excess of that required.

(3) *RECEIPTS CREDITED TO ACCOUNT.*—Notwithstanding section 3302 of title 31 all fees and amounts collected by the Administration, except insurance premiums and other fees charged for the provision of insurance and deposited in the Aviation Insurance Revolving Fund and interest earned on investments of such Fund, and except amounts which on the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996 are required to be credited to the General Fund of the Treasury, (whether imposed under this section or not)—

(A) shall be credited to a separate account established in the Treasury and made available for Federal Aviation Administration activities as offsetting collections;

(B) shall be available immediately for expenditure but only for Congressionally authorized and intended purposes; and

(C) shall remain available until expended.

(4) ANNUAL BUDGET REPORT BY ADMINISTRATOR.—The Administrator shall, on the same day each year as the President submits the annual budget to the Congress, provide to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives—

(A) a list of fee collections by the Administration during the preceding fiscal year;

(B) a list of activities by the Administration during the preceding fiscal year that were supported by fee expenditures and appropriations;

(C) budget plans for significant programs, projects, and activities of the Administration, including out-year funding estimates;

(D) any proposed disposition of surplus fees by the Administration; and

(E) such other information as those committees consider necessary.

(5) INDEPENDENT STUDIES.—Within 6 months after the date of enactment of the Air Traffic Management System Performance Improvement Act of 1996, the Administrator shall cause to be prepared by persons having no direct financial interest in the results of such studies, independent studies—

(A) assessing the costs to the Administration occasioned by the provision of services to each segment of the aviation system; and

(B) reviewing the funding needs and assumptions for operations, capital spending, and airport infrastructure of the Administration, taking into account the degree of funding needed, in view of projected workload increases for the agency, for the Administration to maintain, at a minimum, the current levels and types of operational and safety services it provides, both in terms of quality and timeliness, for the benefit of the aviation community and the traveling public.

(6) FEES NOT IMPOSED UNTIL 6 MONTHS AFTER STUDIES COMPLETED.—Notwithstanding any provision of law, no fee prescribed by section 45301 or 45302 shall be implemented prior to the date which is 6 months after the date upon which the studies performed pursuant to paragraph (5) of this subsection have been submitted to the Congress.

(7) COMPENSATION TO CARRIERS FOR ACTING AS COLLECTION AGENTS.—The Administration shall prescribe regulations to ensure that any air carrier required, pursuant to the Air Traffic Management System Performance Improvement Act of 1996 or any amendments made by that Act, to collect a fee imposed on another party by the Administrator may collect from such other party an additional uniform amount that the Administrator determines reflects the necessary and reasonable expenses (net of

interest accruing to the carrier after collection and before remittance) incurred in collecting and handling the fee.

(8) *COST REDUCTION AND EFFICIENCY REPORT.*—

(A) *IN GENERAL.*—60 days prior to submission by the Administrator to the Congress of a proposal for establishment, implementation, or expansion in fees imposed on the aviation industry, the Administrator shall submit to the Management Advisory Council established under section 106(p) the report prepared under subparagraph (B).

(B) Prior to the submission of any proposal for establishment, implementation, or expansion of any fees imposed on the aviation industry, the Administrator shall prepare a report which includes—

- (i) a justification of the need for the proposed fees;
- (ii) a statement of steps taken by the Administrator to reduce costs and improve efficiency within the Administration;
- (iii) an analysis of the impact of any fee increase on each sector of the aviation transportation industry; and
- (iv) a comparative analysis of any decrease in taxes amounts equal to the receipts from which are credited to the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986.

(b) *FEE ALLOCATION.*—In the fee systems established under sections 45301 and 45302, no segment of the aviation industry shall pay more than its fully allocated costs as determined under subsection (a)(5)(A).

(c) *CONGRESSIONAL PROCEDURE.*—

(1) *IN GENERAL.*—This subsection is enacted by the Congress as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such these provisions are deemed to be a part of the rules of each House of the Congress, respectively, applicable only to the procedure to be followed in that House for resolutions described in this subsection. These provisions supersede other rules of each House of the Congress only to the extent that they are inconsistent with those other rules, and they are enacted with full recognition of the constitutional right of each House to change them, to the extent that they relate to the procedure of that House, in the same manner and to the same extent as any other rule of that House.

(2) *RESOLUTION.*—For purposes of this subsection, the term “resolution” means a joint resolution relating to the disapproval of a fee proposal submitted by the Administrator under section 45301 or 45302, the matter after the resolving clause of which is as follows: “That the Congress disapproves the fee proposal submitted by the Administrator of the Federal Aviation Administration on — and identified as —.”, the first blank space being filled with the date on which the proposal was submitted and the second being filled with the title or other description of the proposal. The term does not include a resolution that relates to more than one proposal.

(3) *REFERRAL.*—Upon introduction, a resolution shall be referred to the Committee on Commerce, Science, and Transport-

tation of the Senate or the Committee on Transportation and Infrastructure of the House of Representatives.

(4) *MOTION TO DISCHARGE.*—If the committee to which a resolution has been referred has not reported it at the end of 20 calendar days after its introduction, it is in order to move to discharge the committee from further consideration of that resolution.

(5) *RULES FOR MOTION TO DISCHARGE.*—A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same proposal), and debate thereon shall be limited to not more than 1 hour, with the time divided equally between those favoring and those opposing the motion. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to. Motions to postpone shall be decided without debate.

(6) *EFFECT OF MOTION.*—If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution with respect to the same proposal.

(7) *SENATE PROCEDURE.*—

(A) *MOTION TO PROCEED.*—When the committee of the Senate has reported, or has been discharged from further consideration of, a resolution, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) *LIMITATION ON DEBATE.*—Debate in the Senate on the resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(C) *NO DEBATE ON CERTAIN MOTIONS.*—In the Senate, motions to postpone made with respect to the consideration of a resolution and motions to proceed to the consideration of other business shall be decided without debate.

(D) *APPEALS.*—Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a resolution shall be decided without debate.

(8) *EFFECT OF ADOPTION OF RESOLUTION BY OTHER HOUSE.*—If, before the passage by one House of the Congress of a resolution of that House, it receives from the other House a resolution, then the following procedures apply:

(A) The resolution of the other House shall not be referred to a committee and may not be considered in the House re-

ceiving it, except in the case of final passage as provided in subparagraph (B)(i).

(B) With respect to the resolution described in subparagraph (A) of the House receiving it—

(i) the procedure in that House shall be the same as if no joint resolution had been received from the other House; but

(ii) the vote on final passage shall be on the resolution of the other House.

§ [45303] 45304. Maximum fees for private person services

Subtitle VII. Aviation Programs

PART C. FINANCING

CHAPTER 481. AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

§ 48104. Certain direct costs and joint air navigation services

(a) AUTHORIZATION OF APPROPRIATIONS.—Except as provided in this section, the balance of the money available in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 (26 U.S.C. 9502) may be appropriated to the Secretary of Transportation out of the Fund for—

(1) direct costs the Secretary incurs to flight check, operate, and maintain air navigation facilities referred to in section 44502(a)(1)(A) of this title safely and efficiently; and

(2) the costs of services provided under international agreements related to the joint financing of air navigation services assessed against the United States Government.

(b) LIMITATION FOR FISCAL YEARS 1993.—The amount that may be appropriated out of the Fund for fiscal year 1993 may not be more than an amount equal to—

(1) 75 percent of the amount made available under sections 106(k) and 48101–48103 of this title for that fiscal year; less

(2) the amount made available under sections 48101–48103 of this title for that fiscal year.

(c) LIMITATION FOR FISCAL YEARS 1994–1996.—The amount appropriated from the Trust Fund for the purposes of paragraphs (1) and (2) of subsection (a) for each of fiscal years 1994, 1995, and 1996 may not exceed the lesser of—

(1) 50 percent of the amount of funds made available under sections 48101–48103 of this title for such fiscal year; or

(2) (A) 70 percent of the amount of funds made available under sections 106(k) and 48101–48103 of this title for such fiscal year; less

(B) the amount of funds made available under sections 48101–48103 of this title for such fiscal year.

This subsection shall be applied for fiscal years 1997 and 1998 by substituting “80 percent” for “50 percent” in paragraph (1), and by substituting “90 percent” for “70 percent” in paragraph (2).

Subtitle VII. Aviation Programs

PART C. FINANCING

CHAPTER 481. AIRPORT AND AIRWAY TRUST FUND AUTHORIZATIONS

[§ 48109. Submission of budget information and legislative recommendations and comments

[When the Administrator of the Federal Aviation Administration submits to the Secretary of Transportation, the President, or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102 of this title, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the Speaker of the House of Representatives, the Committees on Public Works and Transportation and Appropriations of the House, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.]

§ 48109. Budget information and legislative recommendations and comments

(a) *PREPARATION.*—Beginning with the budget for the first fiscal year beginning after the first fiscal year in which the Federal Aviation Administration is funded entirely by user fees, the Administrator shall prepare a budget for the Administration for each fiscal year.

(b) *SUBMISSION OF BUDGET TO DoT.*—At the same time that agencies of the Department of Transportation having jurisdiction over other modes of transportation are required to submit their budgets to the Secretary of Transportation, the Administrator shall submit to the Secretary the budget prepared by the Administrator. The budget submission shall include a statement of income and expenses and analysis of the surplus or deficit in the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986, and any other such supplementary information as is necessary or desirable to make known about the financial condition and operations of the Administration. The annual budget shall be included in the budget submitted by the President pursuant to chapter 11 of title 31, United States Code. The Secretary shall review the budget and may recommend to the Administrator modifications in the budget necessary to ensure that the budget is consistent with the needs of the national transportation system. The Administrator may modify the budget to adopt any recommendation made by the Secretary.

(c) *SUBMISSION OF BUDGET TO CONGRESS.*—

(1) *IN GENERAL.*—When the Administrator submits to the President or the Director of the Office of Management and Budget any budget information, legislative recommendation, or comment on legislation about amounts authorized in section 48101 or 48102, the Administrator concurrently shall submit a copy of the information, recommendation, or comment to the

Speaker of the House of Representatives, the Committees on Transportation and Infrastructure and Appropriations of the House of Representatives, the President of the Senate, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate.

(2) *SPECIAL RULE WITH RESPECT TO ANNUAL BUDGETS.*—*The annual budget of the Administration submitted to Congress shall include—*

(A) any modifications made by the Administrator under subsection (b) with respect to the budget; and

(B) if the Administrator does not adopt a recommendation made by the Secretary under subsection (b), a description of the recommendation and the reasons for not adopting the recommendation.

(d) *COST REDUCTION AND EFFICIENCY REPORT REQUIRED.*—*Whenever the Administrator submits a report, request, or proposal that contains an increase in either the budget of the Administration or any of the fees imposed by the Administration, the Administrator shall submit, as a part of that report, request, or proposal—*

(1) an explanation that states specifically the need for the increase; and

(2) a statement of any steps taken by the Administration to reduce costs and improve efficiency in order to avoid or limit the increase.

CHAPTER 482—ADVANCE APPROPRIATIONS FOR AIRPORT AND AIRWAY TRUST FACILITIES

Sec.
48201. Advance appropriations.

§ 48201. Advance appropriations

(a) *MULTIYEAR AUTHORIZATIONS.*—*Beginning with fiscal year 1997, any authorization of appropriations for an activity for which amounts are to be appropriated from the Airport and Airway Trust Fund established under section 9502 of the Internal Revenue Code of 1986 shall provide funds for a period of not less than 3 fiscal years unless the activity for which appropriations are authorized is to be concluded before the end of that period.*

(b) *MULTIYEAR APPROPRIATIONS.*—*Beginning with fiscal year 1997, amounts appropriated from the Airport and Airway Trust Fund shall be appropriated for periods of 3 fiscal years rather than annually.*

Subtitle IX. Commercial Space Transportation

CHAPTER 701. COMMERCIAL SPACE LAUNCH ACTIVITIES

[§ 70118. User fees

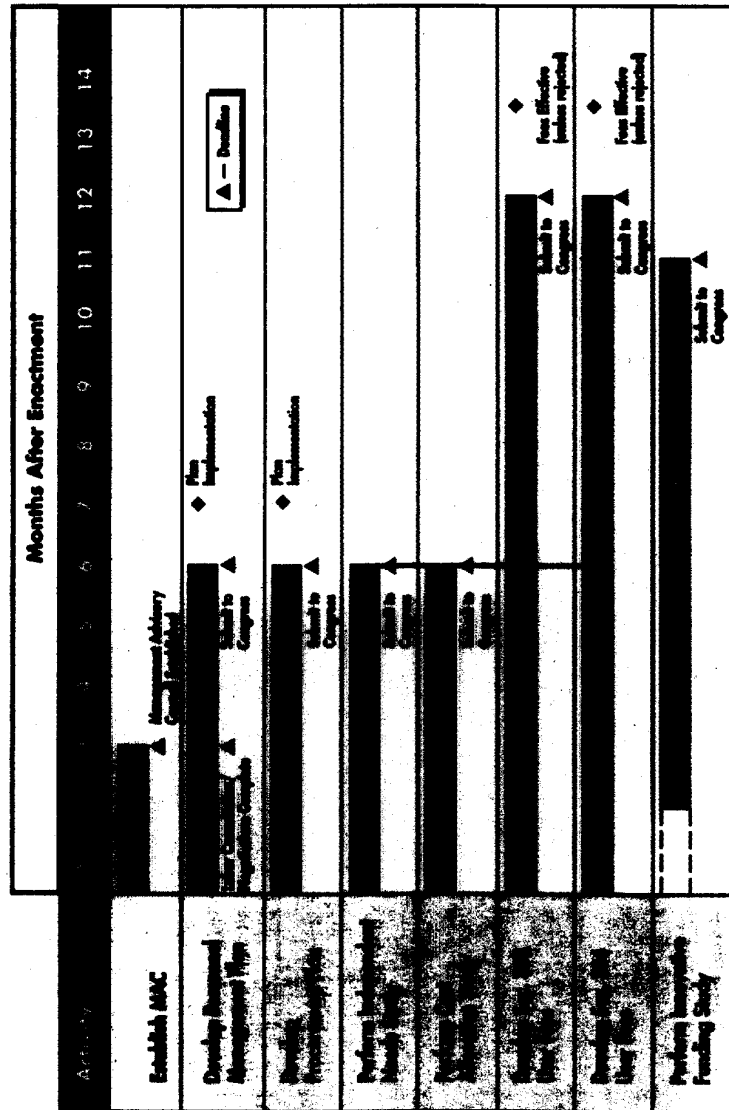
[The Secretary of Transportation may collect a user fee for a regulatory or other service conducted under this chapter [49 U.S.C.

70101 et seq.] only if specifically authorized by this chapter [49
U.S.C. 70101 et seq.].]

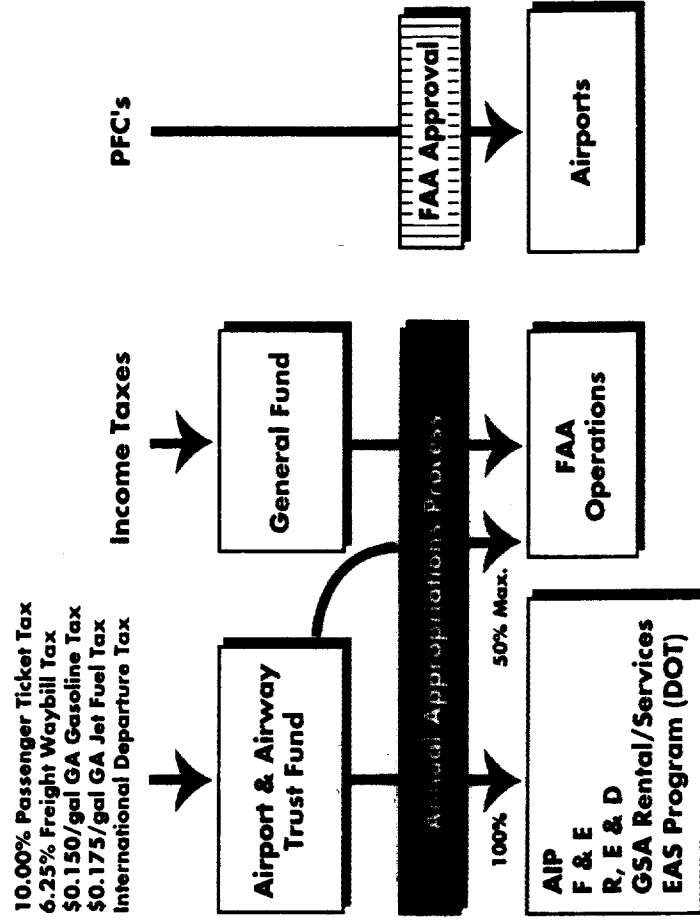
APPENDICES

APPENDIX A

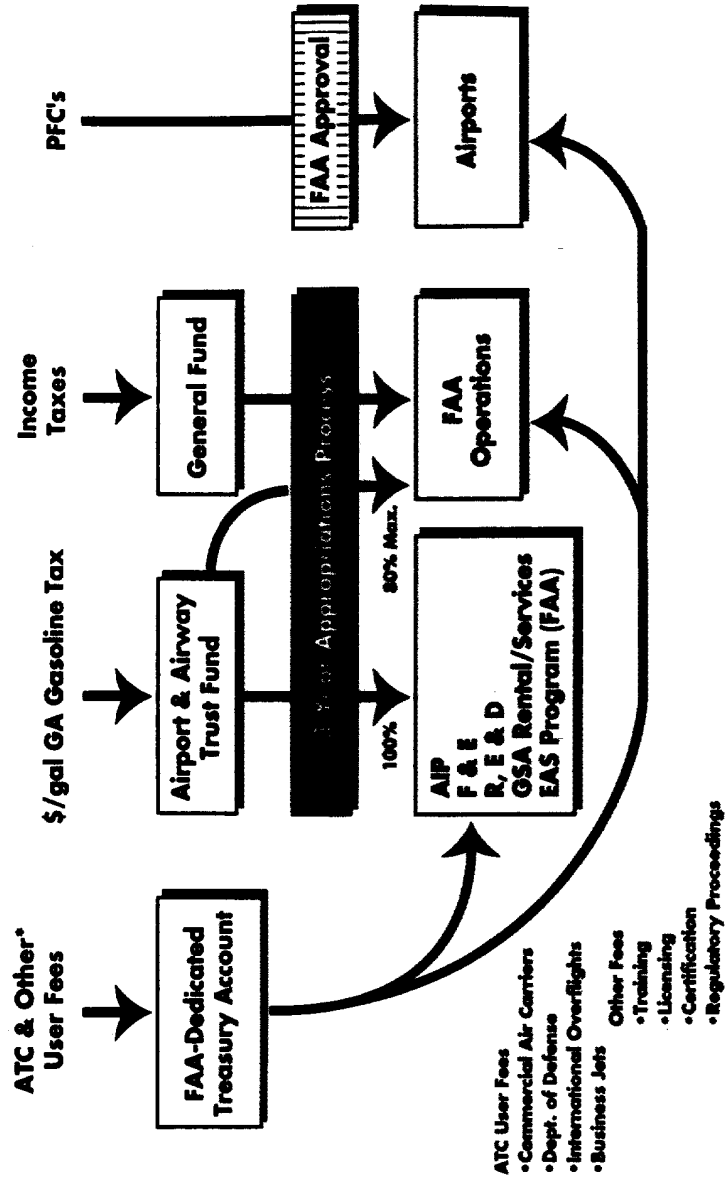
S. 1239 Timeline



Current FAA Funding Structure



Potential FAA Funding Structure Under S. 1239



APPENDIX B

NATIONAL TRANSPORTATION SAFETY BOARD,
Washington, DC, November 8, 1995.

Hon. JOHN MCCAIN,
*Chairman, Subcommittee on Aviation, Committee on Commerce,
Science, and Transportation, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN MCCAIN: It is my understanding that tomorrow the Senate Committee on Commerce, Science, and Transportation will mark up S. 1239, the Air Traffic Management System Performance Improvement Act of 1995. Although the full Board has not taken a position on this legislation, I did want to share my personal views with you.

As Chairman of the National Transportation Safety Board, I see on a daily basis the immense job the Federal Aviation Administration has to accomplish. The competition for funds during a period of tighter federal budgets, the need to anticipate and justify future staffing requirements annually, and the protracted process for procurement of new equipment, are all factors that can degrade efficiency and affect the ability of the system to respond to new demands and new technology. I believe the reforms in S. 1239 remedy this deficiency, without taking the aviation trust fund off budget, and I hope the Commerce Committee will fully support this bill.

Many of the safety enhancing actions identified by the Board in the past have required research, development, procurement and installation programs that span several years. Examples are Terminal Doppler Weather Radar, Airborne Collision Avoidance Systems, airport surface surveillance and conflict detection equipment. Many of these programs have experienced development and installation schedule slippages. So, too, has the FAA's air traffic control system modernization programs. It is difficult for the Board to determine the role of budget planning in these slippages; however, it is obvious that the need to justify budgets and establish priorities during this period when the Federal government must tighten budgets could have an impact on significant safety programs. S. 1239 would ensure the continuation of that funding in a fiscally responsible manner.

Mr. Chairman, we take pride that America's aviation industry is the safest in the World. Without a predictable source of funds, there is the potential that new safety-related technical systems may be delayed, degrading that safety. The FAA, the agency responsible for the implementation and administration of these systems, believes that this bill will greatly improve the prospects for the acquisition of these critically important safety systems. I concur in their judgement on this matter.

Sincerely,

JIM HALL, *Chairman.*

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, November 8, 1995.

Hon. JOHN MCCAIN,
*Chairman, Subcommittee on Aviation, Committee on Commerce,
Science, and Transportation, U.S. Senate, Washington, DC.*

DEAR JOHN: I am writing to explain the position taken by the Transportation Appropriations conferees on amendment numbered 44 of H.R. 2002, regarding user fees. As you know, the Senate bill language, which would have required the Federal Aviation Administration (FAA) to raise an additional \$10,000,000 in offsetting collections associated with safety and security regulations, was dropped in the appropriations conference.

That position should not be interpreted as meaning that additional user fees or new sources of funding are not necessary for the FAA. The statement of managers language explaining why the Senate bill language was dropped was very explicit. It stated that the administration had not demonstrated the need for new fees. Recognizing the need for additional revenues, the intent of the original Senate language was to encourage the FAA to maximize its collection of existing fees. As was pointed out in the Senate report language accompanying the bill, current fees do not cover the full costs of conducting a number of activities. It was felt that FAA was not fully utilizing its existing authority in a number of areas.

Unfortunately, the administration and others focused on raising new fees, and not examining and better managing existing authority. As you know, the granting of authority to raise new fees rests with either your committee or, depending on the nature of those fees, the Finance Committee. You should also know that the House conferees raised the jurisdiction issue with me on behalf of the House Ways and Means Committee.

The Appropriations bill language in amendment numbered 44 would only have been in effect for fiscal year 1996. The decision to drop the Senate bill language does not negate the need for FAA to review its existing fee structure; for FAA to impose new fees where necessary; nor, the need for FAA to be on a more sound financial base, now or in the future.

It is unfortunate that the confusion over new versus existing collections and the question of jurisdiction obfuscated the real issue, which is the need for real financial reform by the Federal Aviation Administration.

I am concerned about FAA's cost structure. But the inability to maintain the Senate position on raising an additional \$10,000,000 in offsetting collections, specifically in fiscal year 1996, should not detract from your efforts. Unfortunately, the appropriations conference position forced us to fund FAA operations with a potential transfer of \$60,000,000 from the Coast Guard's operating expenses account. That is no way to fund the FAA. It is an unsound financial practice: unfair to both the FAA and the Coast Guard, and something I would not want to repeat in the fiscal year 1997 bill.

I support your efforts to find a long-term solution to the financing problem. I hope that this letter clarifies the reasons and state-

ment of managers language surrounding the issue of offsetting collections.

With kind regards,

MARK O. HATFIELD.

NATIONAL AIR TRAFFIC
CONTROLLERS ASSOCIATION,
Washington, DC, November 9, 1995.

Hon. JOHN MCCAIN,
*U.S. Senate,
Washington, DC.*

DEAR MR. CHAIRMAN: The National Air Traffic Controllers Association (NATCA) supports the personnel reform language contained within S. 1239. The association believes that providing the exclusive bargaining representatives with full bargaining rights over the development of a new personnel system provides a fair platform that will benefit the agency, the employees and ultimately the users of the air traffic control system.

We are aware of other efforts in substitution of S. 1239 and fear that these attempts, with all good intentions, may further delay FAA Reform that is desperately needed at this time. The Air Traffic Control system continues to crumble and the safety of the system is in the balance. Your bill provides the funding stream necessary to modernize the system that is in need of repair. We will be working with hope that S. 1239 succeeds the mark up and are encouraging the committee members to assist in this endeavor.

NATCA applauds your efforts to reform the air traffic control system. It has been a long time in coming and it took your leadership to finally make it a reality.

Your bill provides the flexibility the FAA needs to meet the demands of the 21st century while protecting the interests of the men and women who operate the air traffic control system. It provides for continuation of collective bargaining agreements, representational status for NATCA and other unions and provides for the duty to bargain in good faith. Your bill allows the employees who will have to live and work under the new system the ability to develop the system.

Thank you for drafting a bill which will provide the necessary reform to modernize the FAA and make it more responsive to the users.

Respectfully,

MIKE McNALLY, *Executive Vice President.*

THE SECRETARY OF TRANSPORTATION,
Washington, DC, November 8, 1995.

Hon. LARRY PRESSLER,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: As your committee takes up S. 1239, the "Air Traffic Management System Performance Improvement Act of 1995," I want to stress the urgency of taking action now to put Federal Aviation Administration (FAA) financing on a sound foot-

ing. That is why I urge support for the McCain-Ford substitute and oppose efforts to constrain FAA financial reform, including any substitute that would replace real budgetary reform with a study of user fees.

By the year 2002, more than 800 million passengers per year will be flying the nation's skies—a 35 percent increase over today's levels. Yet under the Congressional Budget Resolution for fiscal years 1996–2002, FAA's budget could decline by 14 percent during the same period.

With cuts of this magnitude, the likely result will be a significant increase in flight delays and airline costs, with impacts on the whole national economy. Either FAA reduces services or finds a different way to finance its operations.

Subcommittee Chairman McCain and others have developed a forward-looking proposal in S. 1239 that would ensure that funds raised for aviation purposes will be available for unencumbered use by the FAA. User financing is critical to budgetary flexibility and the opportunity to make the types of air traffic and safety improvements we must make now for the future. As stated by Appropriations Committee Chairman Hatfield during debate on the Congressional Budget Resolution, without financial reform, there would be "severe and devastating cuts in FAA operations, which will have direct impacts on the viability of the air traffic control system."

A substitute offered to delay or delete some or all of the financing reform will remove the primary rationale for S. 1239. A study of user-fee issues is unneeded, because the bill already assures that the user fees will be thoroughly studied and then presented to Congress for review before they take effect. Thus, the aviation industry and Congress have the opportunity to address issues raised as the proposal is developed, and a study phase will only postpone full financing of FAA activities. The Administration itself recognizes that other financing issues remain to be resolved, including the status of Defense Department operations and services under a user-fee system. We look forward to meeting with committee members to improve and refine the legislation.

S. 1239 embodies the momentum of sustained efforts by many parties over the past two years to achieve real changes for the FAA, and any delay now will prevent us from obtaining our common goal. S. 1239 and the McCain-Ford substitute deserve the full committee's support, and that will be critical to maintaining aviation excellence into the next century. The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to providing these views for the consideration of Congress.

Sincerely,

MORTIMER L. DOWNEY,
(For Federico Peña).